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Congressional Information Service,
Washington, D.C.

Calendar No. 136

101st Congress
1st Session

SENATE

Report
101-60

COMPREHENSIVE URANIUM ACT OF 1989

July 6 (legislative day, January 3), 1989.—Ordered to be printed

Filed under authority of the order of the Senate of June 22 (legislative day, January 3), 1989

Mr. Johnston, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 83]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 83) to establish the amount of costs of the Department of Energy's uranium enrichment program that have not previously been recovered from enrichment customers in the charges of the Department of Energy to its customers, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

Purpose of the Measure

The purpose of the Comprehensive Uranium Act of 1989, as reported by the Committee on Energy and Natural Resources, is to ensure an adequate long term supply of domestic uranium and uranium enrichment capacity for the nation's national defense and its nuclear power program. The bill contains measures to establish the United States Enrichment Corporation to operate the Federal uranium enrichment program on a profitable and efficient basis in order to maximize the long term economic value to the United States. The bill also contains measures to provide assistance to the domestic uranium industry and provides a Federal contribution for the reclamation of tailings generated pursuant to Federal contracts at active uranium and thorium processing sites.

S313-11

SUMMARY OF MAJOR PROVISIONS

TITLE I—URANIUM ENRICHMENT CORPORATION

Subsection 161v. of the Atomic Energy Act of 1954 is deleted in section 111. Section 161v. contains the current pricing and operational guidelines for the enrichment program and a requirement for DOE to maintain the viability of the domestic uranium industry.

Section 1202 of chapter 22 establishes the "United States Enrichment Corporation" as a wholly-owned Government corporation. The Corporation is an agency and instrumentality of the United States.

The purposes of the Corporation are described in section 1203 of chapter 22. They include operating the Corporation as a commercial enterprise, on a profitable and efficient basis, in order to maximize the long term economic value to the United States and conducting its activities consistent with the health and safety of the public.

Section 1401 of chapter 24 establishes the corporate powers and duties of the United States Enrichment Corporation, including: (1) providing uranium enrichment and related services for commercial customers; (2) conducting research and development; and (3) providing uranium enrichment and related services to the Department of Energy for defense purposes.

Section 1501 of chapter 25 gives direction of the Corporation to an Administrator, appointed by the President, with the advice and consent of the Senate. The Administrator is the Chief Executive Officer of the Corporation and is responsible for the management and the direction of the Corporation. However, the Secretary retains authority for general supervision over the Administrator concerning (1) common defense and security and (2) health, safety and the environment.

Section 1503 of chapter 25 establishes a five-member Corporate Board appointed by the President. The Corporate Board is directed to review the policy and performance of the Corporation. The Administrator is required to respond, in writing, to any rejection of the recommendations of the Corporate Board.

Section 1505 of chapter 25 authorizes the Secretary, as requested by the Administrator, to transfer appropriate DOE properties to the Corporation, including production facilities, stocks of feed materials and enriched uranium to the Corporation. The Oak Ridge Gaseous Diffusion Plant in Oak Ridge, Tennessee and the Gas Centrifuge Enrichment Plant in Portsmouth, Ohio remain with the Department, except for replacement parts. The Oak Ridge Gaseous Diffusion Plant will be transferred to the Corporation when decontamination or decommissioning is to occur, but no earlier than January 1, 2001.

Section 1506 of chapter 25 establishes the capital structure of the Corporation by directing it to issue stock to, and held by, the Treasury representing an equity investment equal to the book value of the assets transferred to the Corporation. The Corporation will pay dividends to the Treasury out of earnings as a return on the investment, unless there is an overriding need to retain these funds. This section also establishes the initial debt of the Corporation at $364 million.

Section 1507 of chapter 25 authorizes the Corporation to obtain $2.5 billion of private financing, which may be secured by the Corporation's revenues. The Corporation is prohibited from borrowing from the Federal Financing Bank.

Section 1508 of chapter 25 authorizes the corporation to price its commercial services competitively within certain guidelines and consistent with the purpose of maximizing the long term economic value to the United States. Enrichment service prices to the Department of Energy must recover costs on a yearly basis, including the costs of decontamination, decommissioning and remedial action; however, prices for low assay defense enrichment services are capped by the average price to commercial customers. Enrichment service prices to DOE for high assay enrichment services must also provide for the maintenance of a minimum level of operation of the high assay production facility.

Section 1601 of chapter 26 initially exempts existing facilities of the Corporation from licensing by the Nuclear Regulatory Commission (NRC). However, the NRC is directed to promulgate regulations or issue other regulatory guidance for licensing of existing facilities within two years of the date of enactment of this title. One year later, the Corporation is directed to apply for an NRC license. The facilities may continue to operate until a license is issued. The Corporation is subject to the regulatory jurisdiction of the NRC and the Department of Transportation with respect to the packaging and transportation of nuclear material.

Section 1606 of chapter 26 provides the Administrator the same authority to indemnify contractors of the Corporation as the Secretary has to indemnify contractors of the Department under the Price-Anderson Act. However, once the facilities are licensed by the NRC, the Commission shall treat the Corporation and its contractors as licensees for Price-Anderson purposes.

An interim study on the feasibility of privatization three years after the date of enactment of this title or January, 1993, whichever is later is required by section 1608 of chapter 26. This section also requires a final report on privatization five years after the date of enactment of this title.

Section 1701 of chapter 27 establishes the Uranium Enrichment Decontamination and Decommissioning Fund in the Treasury of the United States. The Corporation is required, in section 1702, to make annual payments to the Fund.

Section 114 makes miscellaneous changes to the Atomic Energy Act and changes the licensing requirements applicable to new enrichment facilities. This section also exempts the Corporation from sequestration under the Gramm-Rudman-Hollings law.

TITLE II—URANIUM

Subtitle A sets forth fundings concerning the status of the domestic uranium mining and milling industry and the benefits of providing assistance to the domestic uranium industry.

Section 210 of subtitle B establishes a voluntary overfeeding program for the United States Enrichment Corporation. Domestic uranium supplied by an enrichment customer will be used by the Corporation for overfeeding in the enrichment process. Savings achieved by the Corporation, resulting from reduced power requirements, will be credited to that customer.

The National Strategic Uranium Reserve, consisting of 50,000,000 pounds of natural uranium contained in United States defense stockpiles, is established in section 211 of subtitle B.

Section 212 of subtitle B assigns a continuing responsibility for the domestic uranium industry by the Secretary, including the promotion of the export of domestic uranium.

Section 213 of subtitle B authorizes the United States to only enter into contracts for the purchase of uranium which is of domestic origin and which is from domestic producers. This subsection does not apply to the Tennessee Valley Authority.

Section 220 of Subtitle C directs the Secretary to reimburse licensees of active uranium or thorium processing sites for a portion of the costs of decontamination, decommissioning and remedial action of tailings generated as an incident of sales to the United States. This reimbursement is subject to a limitation of $4.50 per ton of tailings, and costs must have been incurred prior to December 31, 2002.

Section 222 of subtitle C authorizes the appropriation of not more than $300 million for a Federal contribution to mill tailings cleanup costs, subject to an inflation index determined by the Secretary.

BACKGROUND AND NEED

I. UNITED STATES ENRICHMENT CORPORATION

Under the Atomic Energy Act of 1954, DOE is responsible for producing enriched uranium for civilian and defense uses. The Department of Energy (DOE) operates the only domestic facilities for the enrichment of uranium to produce fuel for commercial nuclear power production, nuclear-powered submarines and nuclear weapons. In the 1960's and early 1970's, DOE had a worldwide monopoly in enrichment technology and in the provision of enrichment services. Since that time, several European countries and the Soviet Union have built capacity to serve their own nuclear power programs. These foreign consortia—Eurodif (France, Italy, Spain, Belgium) and Urenco (United Kingdom, the Netherlands and West Germany)—and the Soviet Union now offer strong competition to DOE. DOE currently serves approximately 90 percent of the domestic market, but serves only approximately 50 percent of the world market outside the Soviet Union. The current U.S. enrichment program is structured by law to operate as the monopolist in the enrichment services market, even though business circumstances now dictate otherwise.

In the late 1960's and early 1970's, there were growing expectations for a large nuclear power program. These expectations prompted utilities to sign long-term, fixed commitment contracts that require the delivery of uranium to the Government on a fixed schedule for purposes of enrichment. Due to these growth expectations, the existing and planned enrichment capacity of 27.3 million SWU's per year was fully under contract by 1974, and consequently DOE closed its order books.

Subsequent growth in the world market for enrichment services was far less than expected. Huge customer-held inventories of enriched uranium accumulated as utilities were unable to use all of the uranium that they were committed to take under those long term fixed commitment contracts. This buildup of inventory created a secondary market in enriched uranium. DOE's closing of its order books also encouraged the development of foreign competition, which ultimately contributed significantly to the deterioration of DOE's share of the market.

The foreign suppliers have excess production capacity that is likely to continue to erode the U.S. market share. The Soviet Union has excess capability of at least 2 million SWU per year that can compete for long term or spot sales. European suppliers also have excess capacity estimated to be in excess of 2 million SWU per year. One European supplier (Urenco) is able to add increments of new capacity with a relatively short lead time at low marginal costs, enabling it to aggressively compete for long term contracts. Additionally, there is an inventory of several million SWU's available throughout the world that can compete for short term sales. And finally, Japan is building enrichment facilities with an initial capacity estimated to be about 1.5 million SWU's.

Competition also appears to be budding in the United States. Recently, Louisiana Energy Services, a joint venture between three U.S. utilities, Fluor Daniels, and the European firm, Urenco, announced plans to build a $750 million enrichment facility in Northern Louisiana for production of 1.5 million separative work units per year by 1996.

In spite of strong competition, DOE has been forced by the rigidity in applicable statutory requirements and in its organization to try to sell separate work units (SWU)—the measure of enrichment services—at prices that are 30 to 40 percent above the market. This poor price competitiveness on DOE's part is ironic in that the "factory costs" of enrichment services from DOE's gaseous diffusion plants at Portsmouth, Ohio and Paducah, Kentucky (and at the moth-balled Oak Ridge, Tennessee plant) are well below competitors' costs. DOE's factory cost of providing enrichment service is approximately $65 per SWU, while the competitor's costs are estimated to be in the $80 to $90 per SWU range.

DOE is forced to price its enrichment services at about $120 per SWU because of several artificially-inflated costs that have been imposed on the program over the years. For example, DOE continues to pay the Tennessee Valley Authority (TVA) under "take-or-pay" contracts for electric power not taken. In December 1987, after a lengthy dispute, DOE and TVA concluded a settlement agreement under which DOE would pay TVA $1.71 billion by 1994. In FY 1989, payments to TVA of $465 million represented 36 percent of DOE's budget for uranium enrichment activities.

Another artificial cost imposed on the program is the "unrecovered cost" that some believe is owed to the Treasury by the enrichment program. Fiscal year 1989 appropriations legislation assumes DOE will return $100 million of its estimated $1.4 billion in revenues to the Treasury as a contribution to deficit reduction and in partial repayment of the program's "unrecovered costs." The notion of unrecovered costs is derived from the pricing standard of section 161v. of the Atomic Energy Act.

Section 161v. requires that prices established under that subsection "shall be on a basis of recovery of the Government's costs over a reasonable period of time." As interpreted by DOE, enrichment prices must recover operating and capital expenditures plus imputed interest. Congress' intent in enacting section 161v. was to prevent the Government from overcharging utilities for enrichment services by exercising the monopoly power it then held in the enrichment market. Thus, this section is solely a pricing standard.

Nevertheless, the General Accounting Office (GAO) has suggested that these unrecovered costs be equated to Treasury borrowing. GAO has estimated the level of unrecovered costs owed to the Treasury at $8.8 billion. As a factual matter, however, neither the accounts of the Federal budget nor those of the U.S. Treasury show any "debt" for the enrichment program. The enrichment program has never taken a loan that needs to be repaid.

However, a significant unrecovered government investment remains on the books of the enrichment enterprise. This equity, approximately $3 billion, represents the assets of the enrichment enterprise and will continue to be recovered through the depreciation component in the price charged for enrichment services. Recovery of these assets, however, does not constitute repayment of a "debt."

GAO does not acknowledge the forward recovery of this investment in future revenues. GAO also does not accept DOE's legal basis for writing down $4.1 billion in unproductive assets in FY 1984 and FY 1985. However, in an October, 1987 report, "Uranium Enrichment: Congressional Action Needed to Revitalize the Program," GAO stated that the write-off was consistent with generally accepted accounting principles. Further, it recognized that "Since the existing program cannot expect to generate revenues sufficient to recover all costs, GAO believes that a practical approach would be to allow DOE to write off unproductive assets." GAO gets on to state that "Under current conditions, if DOE attempted to raise its prices to fully recover all past costs the enterprise would lose even more customers."

In the judgment of the Committee, calculation of any existing debt of the program should be based on the net cash obtained from the Treasury by the program since the beginning of commercial operation in 1969. Net cash flow from the Treasury has occurred when expenditures by the program for commercial purposes exceed the revenues. Excess expenditures and the interest thereon represent the costs that are still to be recovered from the enrichment program. These "unrecovered costs" are estimated at $364 million as of the end of fiscal year 1986. (See Appendix I for an explanation of the calculation of this figure.) Since 1986, significant funds have been returned to the Treasury by the enrichment program, and using the same methodology yields a debt of only $28 million at the end of FY 1988.

In its present state, the program would have difficulty repaying any significant amount to the Treasury due to its overall lack of competitiveness. DOE is not able to serve its customers adequately. Customers decide each spring whether or not to extend their current contracts for ten years hence. To date, DOE has lost almost $1 billion in customer commitments for 1996 through 1999.

In addition to artificial costs, DOE lacks the flexibility to operate as a business in a competitive market. For example, DOE once operated with the flexibility of a large stockpile of enriched uranium. That stockpile will be depleted by the end of FY 1989. With no inventory on hand, DOE can not accommodate any increase in sales. Thus, the current structure penalizes the DOE enterprise when it is successful, for example, when it can potentially make sales.

Also, DOE is not able to take advantage of commercial opportunities for cost savings when they present themselves. A recent example was described to the Committee by Deputy Secretary of Energy Henson Moore on April 19, 1989. Deputy Secretary Moore noted that it will take $120 million in FY 1990 for DOE to produce the same number of SWU that could be produced in FY 1989 for $55 million. DOE recognized that by making the SWU in FY 1989 for delivery in FY 1990, they could thus save the taxpayers $65 million. Lacking any other mechanism for obtaining funds DOE requested that $55 million be included in the FY 1989 Supplemental Appropriations bill. Only in late June did the Congress act on this legislation. No competitive business can operate in this environment.

Restructuring of the enterprise

In January 1984, in an attempt to operate on a more businesslike basis, the Department of Energy embarked on a new strategy for the uranium enrichment enterprise. This three-pronged approach included:

Stabilization of the marketplace through the issuance of new, more flexible contracts;

Development of an R&D program, culminating in the decision to pursue only the Atomic Vapor Laser Isotope Separation technology; and

Establishment of an improved institutional framework for managing the program.

On March 13, 1987, DOE testified that it had been successful in achieving its first two objectives, and that it is currently focusing on the third objective, restructuring. In February and March 1987 letters to the House and Senate Appropriations Committees, DOE stated:

> An independent organization should take over the relevant assets of the Department of Energy uranium enrichment enterprise and carry out in a businesslike, competitive, and profitable manner the commercial uranium enrichment activities now conducted by the Department.

On April 18, 1989, Secretary of Energy Watkins sent to the Congress legislation to restructure the uranium enrichment enterprise as a Government-owned corporation. The transmittal letter states:

> A new enrichment corporation can maintain our share of the existing enrichment market and expand it to win part of * * * new market. In doing so, it not only can preserve an industry that is vital to our economic and nation-

> al security, but also increase its value. An enrichment corporation with the ability to compete fully in the world market can create a positive cash flow for the Government. * * * It can improve the balance of payments deficit, increase the funds available to the taxpayer, and create more jobs.

A Government corporation would achieve the flexibility necessary for the health of this enterprise. GAO, in its October 1987 report, describes the conditions where a new Government corporation is justified:

(1) Performance of a business function requiring many transactions with the private sector;

(2) The potential ability to be self-sustaining; and

(3) The need for greater financial flexibility than the appropriations process permits.

As stated in the report, GAO supports a Government corporation for the enrichment program because such a corporation would meet the criteria listed above and because many of the legislative, budgetary, and financial policies imposed on the enrichment program management are inconsistent with modern business practices.

Nuclear energy currently provides 18 percent of the Nation's energy needs; therefore, a healthy and strong nuclear enrichment program is of vital national interest. The enrichment program must be able to respond to competitive market forces, which will determine the role of the U.S. enrichment program in the world market.

When the U.S. Government enjoyed a monopoly position in the market for enrichment services, it could freely establish prices and the conditions for the sale of enrichment services. However, DOE continues to make business decisions and to conduct business in a manner that is appropriate for a Government agency holding a monopoly, but not appropriate for a commercial entity facing competitive pressures. Prices must go down in order for DOE to retain its most valuable asset—its customers. The DOE programs must be restructured to provide the maximum degree of flexibility in operations, and due to national security and non-proliferation concerns, still maintain accountability to the Government.

A Government corporation, with a clearly-defined mission to operate as a commercial enterprise on a profitable and efficient basis, will provide the enrichment programs with the business-like structure and flexibility that is crucial to the survival of the program. In addition, any legislation for revitalizing the enrichment enterprise should also address other issues which are adversely affecting the program, such as the amount of unrecovered costs owed to the Treasury, and the role of the enrichment program in maintaining the viability of the domestic uranium mining industry.

II. URANIUM INDUSTRY

Prior to 1964, the private ownership of enriched uranium was prohibited by the Atomic Energy Act, and the domestic uranium mining and milling industry was primarily dependent upon purchases by the Federal Government for military purposes. However, in the mid-1960's, military requirements for uranium declined and the demand for uranium was driven by the emerging nuclear power industry.

In 1964, Congress passed the Private Ownership of Special Nuclear Materials Act. The two principal purposes of this Act were termination of mandatory Government ownership of special nuclear materials and authorization for the Atomic Energy Commission (AEC), predecessor of the Department of Energy (DOE), to provide uranium enrichment services to utility customers. This act further encouraged the commercial use of uranium and marked the beginning of the commercial uranium mining and milling market.

To promote this fledgling industry, with its important national security interests, the 1964 Private Ownership Act provided for the protection of the domestic uranium industry from foreign competition. The Atomic Energy Act of 1954 was amended by adding section 161v. to AEC the responsibility for "maintaining a viable domestic industry." That section provides tha tto the extent necessary to assure the maintenance of a viable domestic uranium industry, the Government is prohibited from enriching foreign uranium for domestic use. The purpose of this provision was to aid in the transition from a Government-dominated market to a commercial market.

In 1966, in order to promote the domestic uranium mining industry, the AEC determined that it was necessary to prohibit the enrichment of foreign uranium for domestic use. By 1974, the AEC determined that the uranium industry had been established sufficiently such that the enrichment restriction could be removed in stages. As of 1984, there were no longer restrictions on the enrichment of foreign uranium for domestic use at Government-owned facilities. However, the original directive of section 161v. to maintain a viable domestic uranium industry remains.

Between 1966 and 1983, while the import restrictions on uranium were in force, there were no protests alleging a violation of the General Agreement on Tariffs and Trade (GATT). The reason for the lack of protests presumably reflects the exemption of fissionable material under Article 21 of the GATT. Article 21 states:

> Nothing in this Agreement shall be construed * * * (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests (i) relating to fissionable materials or the materials from which they were derived; * * *

In 1983, in the Nuclear Regulatory Commission Authorization Act of 1982 (Public Law 97-415), Congress added section 170B to the Atomic Energy Act (AEA). Section 170B requires the submission to Congress of a comprehensive review by the Secretary of Energy of the U.S. uranium mining and milling industry and a determination of the viability of the industry. DOE published the criteria for evaluating industry viability in the Federal Register on October 6, 1983. These criteria include: resource capability, supply response capability, financial capability and import commitment dependency.

The first report, pursuant to section 170B of the AEA, reviewed the uranium industry's viability for the year 1983 and was transmitted to Congress in May 1984. Subsequently, the Secretary of Energy issued a determination of the viability of the domestic uranium mining and milling industry for 1983 as also required by section 170B. However, in 1984, 1985, 1986, and 1987, the Secretary, in accordance with section 170B, declared the industry to be not viable based on reviews made of these calendar years. There is no expectation that this assessment will improve in the 1988 report.

The Energy Information Administration (EIA) of the Department of Energy found, in its 1987 report, that annual domestic uranium production was roughly 13 million pounds. This corresponds to only approximately one-third of civilian domestic requirements. The EIA also found employment down to 2,000 person-years in 1987 from 18,400 person-years in 1980, a decline of 89 percent in this decade. Only 6 out of 17 milles were operating in 1987. This represents only 12 percent of total rated U.S. capacity.

Imports of uranium in 1984, 1985, 1986, and 1987 represented respectively 44.2, 34.4, 43.8 and 51.1 percent of U.S. requirements. EIA projects that imports will continue to rise to approximately 70 percent of U.S. requirements by 1992 and then decline gradually to 50 percent by the year 2000. When the import level exceeds 37.5 percent of actual or projected domestic requirements for any consecutive two year period as it did in 1986 and 1987, Section 23(b) of Public Law 97–415 provides that the Secretary of Energy shall request the Secretary of Commerce to investigate the effects on national security of these uranium imports, pursuant to the Trade Expansion Act of 1962. The Department of Commerce expects to finish its analysis by October 1989.

The 1984 finding of "non-viability" triggered a number of actions by DOE which began using its enrichment program as a mechanism for mitigating the problems facing the domestic uranium industry (i.e., changing the variable tails policy and placing a restriction on the use of overfeeding from the government stockpile).

In addition, the U.S. Trade Representative was asked in 1985 to study the uranium issue and determine what actions could be taken under U.S. trade laws to aid the domestic uranium industry. Following a three month interagency review, the Trade Representative, Clayton Yeutter, recommended in December 1985 that no action be taken to restrict imports of uranium under existing law. Representative Yeutter concluded that the industry's problems are not caused by imports more than any other cause, and rejected any Government-initiatived proceeding under section 201 of the Trade Act of 1974. The Trade Representative's view was that the principal cause of the decline of the domestic uranium industry is a failure of demand resulting from delay and cancellation of nuclear reactors, and is complicated by discoveries in Canada of high-quality, lower-cost ores that give Canada a long-term competitive advantage over U.S. producers.

The Uranium Producers of America (UPA) disagree strongly with the Trade Representative's conclusions. The UPA believes that a large portion of the industry's decline stems from the increasing role that imported uranium is playing in the domestic market. In addition, UPA contends that much of the Canadian price advantage derives from direct government subsidization, not from inherently superior ore quality. In 1987, 98 percent of the uranium imported into the United States was from Canada. Although Canada will be reliable supplier of uranium for civilian energy needs, neither Canada nor Australia will supply the U.S. with uranium for military needs.

The UPA believes that DOE's 1984 actions do not comply with the requirements of section 161v., and that restrictions of enrichment services by DOE for foreign source uranium is required by law and would result in significant benefits to the domestic uranium industry.

At the time of enactment of section 161v., the United States was the sole country providing commercial enrichment services. Thus, a restriction on U.S. enrichment of foreign uranium for domestic use would have increased domestic uranium demand. Today, however, a ban on DOE enrichment of foreign uranium, as mandated by the AEA upon a finding of non-viability, may not achieve the result originally intended because utilities can circumvent the AEA restriction by seeking enrichment services overseas. Circumvention of this restriction may not significantly aid the domestic mining industry, could destroy the DOE's enrichment business, and could potentially reduce the market share of the domestic uranium industry if DOE's customers take their enrichment business overseas and purchase their natural uranium overseas as well.

In December 1984, Western Nuclear, Inc. and two other uranium producers sued DOE charging that DOE has not fulfilled its obligations under section 161v. to keep the industry viable. The Federal District Court for the District of Colorado issued an order in September 1985 and June 1986, in favor of the producers. The court ruled that DOE would be required to limit enrichment of foreign uranium for domestic use to 25 percent until December 31, 1986. The court also ruled that starting January 1, 1987, DOE could only enrich uranium mined and milled in the United States for domestic use. However, Congress indicated its intention in the Fiscal Year 1987 Continuing Resolution (Making Continuing Appropriations for Fiscal Year 1987, Conference Report to Accompany H.J. Res. 738, Report No. 99-1005) that the district court's ruling not take effect until the case was finally resolved.

DOE appealed the lower court decision. On July 20, 1987, the Tenth Circuit Court of Appeals ruled in favor of the producers. The Tenth Circuit decision prohibited DOE from enriching any foreign uranium for domestic use. Since this does not restrict the use of foreign uranium in U.S. reactors if that uranium is enriched overseas, the decision could have resulted in the loss of significant portions of DOE's enrichment business to foreign competitors. DOE and the U.S. Solicitor General filed a petition for certiorari with the Supreme Court, and a stay pending disposition was granted by the Tenth Circuit Court of Appeals on October 8, 1987.

The Supreme Court granted certiorari and oral arguments were heard by the Court on April 27, 1988. On June 15, 1988, the Supreme Court issued its decision and held that:

> Section 161v. [of the Atomic Energy Act] does not require DOE to restrict the enrichment of foreign uranium where such restriction would not achieve the statutory goal of "assuring the maintenance of a viable domestic

> uranium industry" for the statute ties the amount of restriction to be imposed to the achievement of that goal.

Thus, the decision of the Appeals Court was reversed and remanded to the lower court. This case was withdrawn without prejudice by the uranium producers in January 1989.

Notwithstanding the decision of the Supreme Court, DOE's ability to control the quantities of foreign origin uranium to be enriched for domestic use would have been severely limited after the passage of the U.S. Canada Free Trade Agreement in 1988. This agreement provides that for the purposes of section 161v. of the Atomic Energy Act, Canadian origin uranium shall be treated identically to domestic origin uranium. In 1988, approximately 32 percent of the uranium delivered by domestic customers to DOE for enrichment came from Canada.

Congress has considered a viable domestic uranium industry as vital to the U.S. national defense and security. While dependency on other nations for strategic minerals generally, and for uranium in particular, may bring some short-term economic gain, it also involves long-term economic and energy security risks to the National common defense and security.

In order to revitalize the domestic uranium industry, the erosion of the domestic uranium market must be reversed. Section 161v. of the Atomic Energy Act, with its ineffective sanction against the enrichment of foreign uranium, must be replaced by a national policy which will encourage the revitalization of the U.S. mining and milling industry and the domestic enrichment programs, without adverse effects on the viability of nuclear electric power.

III. URANIUM MILL TAILINGS

Uranium mill tailings are the byproduct of the extraction of uranium from mined uranium ore. The tailings contain quantities of radioactive materials (uranium, thorium and radon) that are considered a health and environmental risk.

The Uranium Mill Tailings Radiation and Control Act (UMTRCA) was passed by Congress in 1978. This Act provided for the stabilization and reclamation of mill tailings in an environmentally sound manner. Title I of the Act deals with "inactive" mill tailings sites; that is, those sites that were no longer in operation as of January 1978. Since virtually all of the tailings from the twenty-two sites under title I were produced as a result of Federal activities, UMTRCA assigns to DOE the responsibility for cleanup of these sites. Cleanup costs totalling almost $1 billion are apportioned 90:10 between the Federal Government and the States in which these sites are located.

Title II of UMTRC deals with the so-called "active" uranium mill tailings sites; that is, those sites in operation as of January 1978. Responsibility for reclamation of the active sites is assigned to the site owners. At the time UMTRCA was enacted, the estimated total cost of reclaiming all active sites, including those containing mill tailings generated under Federal contracts, was $200 million.

UMTRCA also directs the Environmental Protection Agency (EPA) to establish environmental standards for the cleanup of uranium mill tailings sites. EPA did not promulgate these standards until 1983.

In 1979, in response to a request from the Committee on Energy and Natural Resources, the General Accounting Office (GAO) issued a report entitled "Cleanup of Commingled Uranium Mill Tailings: Is Federal Assistance Necessary?" (DMD79-29), in which GAO recommend that Congress provide assistance to the active site owners for the reclamation of tailings generated under Federal contracts. This recommendation was based on several factors, including the Federal Government's role as buyer of the uranium, the fact that possible hazards from tailings were not recognized at the time they were produced, and the fact that Government procurement contracts did not require reclamation of tailings. The GAO concluded that the mill owners had acted in good faith and should not bear subsequent costs of reclamation by themselves.

Congress expressed interest in assisting reclamation at active siters in a 1981 amendment to the National Security and Military Applications provisions of the Nuclear Energy Authorization act Public Law 96-540). This amendment required DOE "to develop a plan for a cooperative program to provide assistance in the stabilization and management of uranium mill tailings which have resulted from ore processing to extract uranium under contract with the United States for use primarily in defense programs, and which are now commingled with other tailings." The plan was to include a "methodology for establishing the extent of Federal Assistance appropriate to meet costs for stabilizing and managing such tailings at each site in order to comply with a requirement of Federal law or regulations imposed after termination of such Federal contracts."

The plan mandated by Congress was submitted on June 30, 1982, in a DOE report entitled "Plan for Stabilization & Management of Commingled Uranium Mill Tailings" (DOE/DT-0011). The report recommended various cost-sharing approaches for different categories of reclamation activities. It also outlined a cooperative program of Federal assistance for the stabilization and management of defense-related mill tailings. The report did not recommend whether legislation authorizing an assistance program should be adopted, but offered DOE's full cooperation in implementing such a program.

Cost-sharing between the site owners and the Federal government is an equitable approach to the problems of reclamation of uranium mill tailings. In order to establish the Federal government's contribution to this effort, the fraction of the mill tailings generated as a result of purchases made by the Federal government must be ascertained. During the 100th Congress, DOE testified to the Subcommittee on Energy Research and Development that the Federal government contributed to the generation of approximately 30 percent of the total tailings at several of the active sites. It is therefore equitable that the Government contribute to approximately 30 percent of the cost of the reclamation.

The "active" site that contain mill tailings generated under Federal contracts are:

Mill	*Location*
Ford Mill	Ford, Washington
Lucky McMill	Riverton, Wyoming
East Gas Hills Mill	Riverton. Wyoming
Split Rock Mill	Jeffrey City, Wyoming
Petrotomics Mill	Shirley Basin, Wyoming
American Nuclear Mill	Riverton, Wyoming
Moab Mill	Moab, Utah
Ambrosia Lake Mill	Grants, New Mexico
Grants Mill	Grants, New Mexico
Bluewater Mill	Grants, New Mexico
Canon City Mill	Canon City, Colorado
Uravan Mill	Uravan, Colorado
Edgemont Mill	Edgemont, South Dakota

DOE testified, on March 9, 1987, before the Subcommittee on Energy Research and Development, that estimated reclamation costs are estimated to be between $1 billion and $2 billion. The legislation establishes $4.50 per short ton of mill tailings as a limit to the Federal government contribution at each commingled uranium site. As there are approximately 60 million short tons of uranium mill tailings at the commingled uranium sites, the sum of $270 million is established as the Federal share.

In 1986, the National Academy of Sciences (NAS) released a report, "Scientific Basis for Risk Assessment and Management of Uranium Mill Tailings," which reconsiders the approaches and standards of the existing regulatory system. The report concluded that a low level of institutional oversight will be needed to ensure long term control of tailings, that risk management strategies must be site specific, and that health risks to individuals from radon from tailings piles could be significant for those who live nearby (less than 1 kilometer), but are trivial for the average U.S. citizen. The legislation makes no change in the existing regulatory system for uranium mill tailings reclamation.

In light of this history, vesting responsibility for remedial action with the site owners and establishing a joint funding system is a fair and equitable approach to the essential task of mill tailings reclamation. Such a system recognizes that new reclamation requirements have been imposed long after the uranium was produced for defense purposes. In recognition of this need, the Committee reported legislation in the 99th and 100th Congresses which provided for a Federal contribution to mill tailings reclamation. In the 100th Congress this legislation was passed by the Senate on two occasions (S. 2097 and H.R. 1315).

Thorium mill tailings, like uranium mill tailings, are the byproduct of the extraction of thorium from mined ore. The West Chicago Rare Earth Facility, located in West Chicago, Illinois, was operated from 1931 until 1973. About 71 percent of the approximately 650,000 metric tons of wastes to be disposed of from site operations were generated pursuant to Federal contracts. As was the case with the uranium mill tailings, the stabilization of thorium mill tailings must be in accordance with UMTRCA and the regulations that have been promulgated pursuant to that Act.

Cost-sharing between the thorium site owner and the Federal government, the primary customer of this product, provides an equitable approach to financing the reclamation of this site. The justifications for a Federal contribution to the thorium site cleanup are identical to those for uranium mill tailings—namely, that the Federal government intended to pay to costs associated with the production of materials for Federal programs.

To date, approximately $36 million has been expended for reclamation projects by the owner of the West Chicago site. The Nuclear Regulatory Commission has recommended on-site reclamation of the thorium tailings as being the safest and most effective method of reclamation. In the Supplement to the Final Environmental Statement for the West Chicago site, the NRC projects the remaining on-site stabilization costs at $19 million, with a range of $12 to $27 million. In addition, a contribution of $4.4 million to a continuing care fund would be required. If the thorium tailings were to be removed from the site for disposal, the NRC, in that Supplement, estimates that the costs would average about $62 million, with a range of $35 to $90 million. In addition, a contribution of $2 million to a continuing care fund would be required.

The legislation provides for a Federal contribution of up to $30 million for the reclamation of the West Chicago thorium site. This amount recognizes that reclamation costs at the West Chicago site are substantial because: (1) the site is located in a major metropolitan area, and (2) the site is small and therefore does not allow the advantages of economies of scale in reclamation.

LEGISLATIVE HISTORY

In the 99th Congress, the Committee reported S. 1004 (Senate Report 99-464), a bill that addresses the uranium mining, reclamation and enrichment issues considered in the legislation described therein.

In the 100th Congress, the Subcommittee on Energy Research and Development held oversight hearings on March 9 and 13, 1987 (Hearing Report 100-327) on the status of the domestic mining and milling industry and on the status of the DOE enrichment program. The Subcommittee also held legislative hearings on May 4, and May 8, 1987 (Hearing Report 100-347) on the uranium and uranium enrichment bills introduced by Senator Ford (S. 1084 and amendment No. 176) and Senators Domenici, Bingaman, Simpson and Wallop (S. 1100 and amendment No. 177).

A comprehensive uranium bill, which was prepared at the request of the Chairman, was reported by the Committee on October 1, 1987 as S. 1846 (Senate Report 100-214). Subsequently, on February 25, 1988, the Committee reported an original bill, S. 2097, to establish a government corporation to manage the Nation's uranium enrichment program. S. 2097 was passed by the Senate on March 30, 1988.

On August 8, 1988, the Senate again approved uranium and enrichment legislation similar to S. 2097, by adopting it as an amendment to the Nuclear Regulatory Commission Authorization Act (H.R. 1315).

At the end of the 100th Congress, the House adopted H. Res. 603 returning S. 2097 to the Senate, declaring it to be unconstitutional because Titles I and II raise revenue, and revenue raising legislation must, under the Constitution arise in the House.

In the 101st Congress, S. 83 was introduced on January 25, 1989. Amendment 6 to S. 83, to establish a government corporation to manage the Nation's uranium enrichment program, was introduced on February 23, 1989. Amendment 10 to S. 83, to provide for the revitalization of the domestic mining industry and provides a system of financing for the reclamation of uranium mill tailings, was introduced on March 17, 1989 by Senators Domenici, Bingaman, Simpson, Wallop, Garn and Hatch. The provisions of amendments 6 and 10 were virtually identical to those provisions adopted by the Senate on August 8, 1988 as part of H.R. 1315.

On April 18, 1989, the Bush Administration sent proposed legislation to the Congress to establish a government corporation to manage the nation's uranium enrichment program. That bill, S. 847, was introduced (by request) by Senators Johnston and McClure on April 19, 1989.

Hearings were held by the Subcommittee on Energy Research and Development on Amendment 6 to S. 83 and S. 847 on April 19 and 20, 1989 and on Amendment 10 to S. 83 on May 11, 1989.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee in open business session on June 7, 1989, by a majority vote of a quorum present recommends that the Senate pass S. 83, if amended as described herein.

The rollcall vote on reporting the measure, with an amendment in the nature of a substitute and an amendment to the title, was 16 yeas, 2 nays as follows:

YEAS	NAYS
Mr. Johnston	Mr. Bradley
Mr. Bumpers*	Mr. Rockefeller
Mr. Ford	
Mr. Bingaman*	
Mr. Wirth*	
Mr. Conrad	
Mr. Heflin	
Mr. McClure	
Mr. Hatfield	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles	
Mr. Burns	
Mr. Garn*	
Mr. McConnell	

*Indicates vote by proxy.

COMMITTEE AMENDMENTS

The Committee amendment in the nature of a substitute and accomplishes the following changes:

TITLE I—UNITED STATES ENRICHMENT CORPORATION

Establishes the United States Enrichment Corporation (USEC) as a wholly-owned government corporation for purposes of taking over the uranium enrichment enterprise operated by the Department of Energy.

Makes USEC generally subject to the Government Corporation Control Act. The USEC is an agency and instrumentality of the United States.

Directs USEC to: (1) perform uranium enrichment and sell this service to the Department of Energy and qualified persons; (2) conduct research and development; and (3) operate as a commercial enterprise on a profitable and efficient basis in order to maximize long term economic value to the United States.

Gives the direction of the USEC to an Administrator, appointed by the President, with the advice and consent of the Senate. The Administrator acts as CEO of the USEC, and is responsible for all aspects of the Corporation's operations, including setting the appropriate amount, and the payment of any dividends. However, the Secretary of Energy exercises general supervision over the Administrator concerning common defense and security, and health, safety and the environment.

Creates a five-member, part-time Corporate Board appointed by the President. The Board reviews and reports on the policies and performance of USEC.

Transfers to USEC all DOE property related to uranium enrichment, except the Gaseous Diffusion Plant in Oak Ridge, Tennessee and facilities related to the Gas Centrifuge Enrichment Program. The Oak Ridge Gaseous Diffusion Plant will be transferred to the USEC when decontamination and decommissioning is to occur, but no earlier than 2000. Facilities relating to research and development of the Advanced Vapor Laser Isotope Separation technology are not transferred, but USEC is provided access to them for research and development purposes.

Continues all utility enrichment service contracts, power purchase contracts and the settlement agreement between the Department of energy and the Tennessee Valley Authority concerning capacity charges for purchase power.

Issues capital stock to the Secretary of Treasury which represents an equity investment equal to the book value of assets transferred to the Corporation, as reported in the Uranium Enrichment Annual Report for fiscal year 1987, as adjusted to reflect continued depreciation and other usual changes that occur up to the date of transfer. Requires the USEC to pay the Treasury dividends on equity, when earned, as a return on the investment.

Sets the initial debt of the USEC at $364 million and requires that this amount with interest be recovered over 20 years from enrichment customers. This amount represents the difference between revenues and appropriations, with interest, from 1969 (when the commercial enrichment program began) through the end of 1986.

Authorizes USEC to obtain $2.5 billion of private financing, which may be secured by the Corporation's revenues. USEC does not have access to the Federal Financing Bank.

Repeals section 161v. of the Atomic Energy Act and requires USEC to set prices for products, materials and services that recover, over the long term, the costs of performing and maintaining corporate functions including:

research and development;

depreciation of assets;

repayment of the initial $364 million debt and future borrowings;

decontamination, decommissioning and remedial action costs; and

reasonable profit.

Initially exempts USEC from NRC licensing with respect to existing gaseous diffusion plants, but requires the NRC to promulgate licensing regulations or other regulatory guidance for the plants within 2 years. One year later, USEC must apply for license.

Provides for sharing the costs of decontamination and decommissioning and remedial action for uranium enrichment equipment between commercial customers and DOE on the basis of separative work that has been performed with such equipment for the benefit of either group. A decontamination and decommissioning fund is established in the USEC, with annual payments into the fund by the USEC.

Requires an interim study of the feasibility of privatization three years after the enactment of the legislation or January, 1993, whichever is later. A final study on privatization is to be done five years after enactment. If a recommendation for privatization is made in the final report, Congress must enact separate legislation authorizing sale of the enterprise to the private sector.

Allows USEC to indemnify contractors under Price-Anderson Act. However, once NRC issues a license to USEC, the NRC shall treat USEC as its licensee for Price-Anderson purposes.

Exempts USEC from appropriations and apportionment, and exempts USEC from any sequestration order under Gramm-Rudman-Hollings.

TITLE II—URANIUM

Directs the USEC to establish a five year, voluntary overfeeding program. Authorizes enrichment customer to supply excess uranium for use on the enrichment process. Such enrichment customers would receive a credit for the incremental savings resulting from the reduced power requirements.

Creates the National Strategic Uranium Reserve consisting of approximately 50 million pounds of uranium now held by the U.S. for defense purposes. Use of the reserve would be restricted to military purposes and government research.

Authorizes the United States to purchase only uranium which is domestic uranium and which is purchased from domestic producers. This provision excludes the Tennessee Valley Authority.

Provides the Secretary of Energy with a continuing responsibility for the domestic uranium industry, including a responsibility to encourage the export of domestic uranium. However, the Secretary cannot use any supervisory authority over the USEC for this purpose.

Creates a program to reimburse licensees of uranium and thorium mill sites for the costs of reclamation of uranium and thorium mill tailings generated as a result of sales to the Federal government for defense purposes. Authorizes a $300 million federal contribution for reclamation, decommissioning and other remedial action costs. Reimbursement to licensees is generally not to exceed $4.50 per ton.

SECTION-BY-SECTION ANAYLSIS

The first section provides that titles I and II of this Act may be cited as the "Comprehensive Uranium Act of 1989."

TITLE I—UNITED STATES ENRICHMENT CORPORATION

Section 110. Short title

Title I may be cited as the "Uranium Enrichment Act of 1989."

Section 111. Deletion of section 161v.

This section deletes section 161v. of the Atomic Energy Act of 1954 which contains the current pricing requirements applicable to the uranium enrichment enterprise.

Section 112. Redirection of the uranium enrichment enterprise of the United States

This section designates the Atomic Energy Act of 1954 in its present form as title I of the Act and amends the Act to add a new title II pertaining to the United States Enrichment Corporation. (In the discussion of section 112 that follows, the section references are to new sections of the Atomic Energy Act of 1954 as added by this legislation.)

CHAPTER 21

Section 1101. Findings

The findings set forth in section 1101 are generally self-explanatory.

In the judgment of the Committee, changes in the international market for enriched uranium necessitate a restructuring of the Federal uranium enrichment enterprise as provided by this new title II of the Atomic energy Act as added by title I of this bill. It is essential to the national interests of the United States that this enterprise now adopt stable, predictable fiscal and management policies and practicies that enable it to compete in the international market, while continuing to meet the paramount objective of ensuring the nation's common defense and security.

CHAPTER 22

Section 1201. Definitions

The definitions are self-explanatory.

Section 1202. Establishment of the Corporation

This section establishes the United States Enrichment Corporation (USEC) as a wholly-owned government corporation that is subject to the Government Corporation Control Act, except as provided in the legislation. For purposes of determining the applicability of other laws, the section clarifies that the Corporation is to be treated as an agency and instrumentality of the United States.

Section 1203. Purposes

As discussed in the Background and Need section of this report, the uranium enrichment enterprise of the United States has suffered from the lack of a clearly-stated mission. The legislation clarifies the objectives of the enterprise. Subsections (1), (2), (3) and (4) describe specific activities for which the Corporation is being organized. Subsection (5) establishes as the unifying goal of these activities operation of the Corporation "as a commercial enterprise on a profitable and efficient basis; in order to maximize the long term economic value of the Corporation to the United States Government including the payment of dividends to the Treasury as a return on the United States Government investment."

The phrase "in order to maximize the long term economic value of the Corporation" in subsection (5) expresses the Committee's intent that the Corporation conduct its activities so as to balance the requirement for long term economic viability as a business entity with the desire for short term profit. The maintenance of some domestic enrichment capability is essential for purposes of maintaining energy security. The Committee thus expressly rejects so-called "harvest" scenarios in which the enrichment enterprise would be milked for short-term profits at the expense of long-term economic viability of the enterprise. The term "commercial enterprise" requires that, consistent with continuous operation and other policy goals, the Corporation conduct its activities in the manner of a private sector business. The terms "profitable" and "efficient" are adjectives that amplify what is meant by operation as a commercial enterprise.

What is at stake here is the provision of services to others, including the Nation's defense programs and the U.S. commercial nuclear power industry. Maintenance of the physical facilities necessary for the long term provision of these services requires integrated research, development, and capital construction programs.

Subsection (6) requires the Corporation to operate on a self-financing basis and eliminates the need for appropriations. Such operation should be the result of meeting the requirements set out in subsection (5).

Similarly, the maintenance of a "reliable and economical domestic source of enrichment services" as set out in subsection (7) is expected to be the result of operation of the enrichment enterprise under the requirements of subsection (5) and other provisisns of the legislation. Because the Corporation is required to remain in business for the long term, enrichment services provided by the Corporation should be reliable. Enrichment services thus should be economical because the Corporation is permitted to meet foreign competition head-on, free of current financial burdens and the bureaucratic impediments.

Subsections (8) and (9) recognize that the commercial and energy security purposes described thus far must be tempered by, and be consistent with, ensuring public health and safety and maintaining the paramount objective of the common defense and security. With respect to the latter concern, the Corporation can play a critical role in providing enrichment services necessary for producing nuclear submarine fuel and other defense-related purposes and in helping to achieve U.S. nonproliferation goals.

Subsection (10) is self-explanatory.

CHAPTER 23

Section 1301. Corporate offices

This section is self-explanatory.

CHAPTER 24

Section 1401. Specific corporate powers and duties

Subsection (a) of this section requires the Corporation to perform uranium enrichment or provide for enrichment to be performed at the Corporation's facilities. In this respect, the Corporation is directed to continue the existing operation contract between the Department of Energy and the contractor according to the contract terms.

Subsection (b) requires the Corporation to conduct, or provide for the conduct of, research and development that the Corporation deems necessary or advisable for purposes of maintaining the Corporation as a commercial enterprise operating on a profitable and efficient basis. Although the specific research and development that must be accomplished is left to the judgment of the Corporation, the Committee intends that it be sufficient to maintain the long-term competitiveness of the Corporation.

Subsections (c) and (d) allow the Corporation to deal only with customers who meet existing regulatory criteria under the Atomic Energy Act.

Subsections (e) and (f) are self-explanatory.

Section 1402. General powers of the Corporation

This section is self-explanatory.

Section 1403. Continuation of contracts, orders, proceedings and regulations

This section generally continues all contracts to which the uranium enrichment enterprise through DOE is now a party, as well as all licenses, privileges, orders, determinations, rules and regulations enjoyed by or applicable to the enterprise. The section specifically substitutes the Corporation in place of the Department of Energy with respect to the December 18, 1987 settlement agreement with the Tennessee Valley Authority regarding the payment of capacity charges under two power contracts. The Committee expects the Corporation to make payments under such settlement agreement in accordance with its terms, including the schedule for such payments, and otherwise to ensure that no term of the settlement agreement is breached.

At the time of enactment, DOE may be involved in various judicial and administrative proceedings. Subsection (c) provides for the general substitution of the Corporation for DOE to the extent that these proceedings properly involve the enrichment enterprise.

Section 1404. Liabilities

Under this section all liabilities that are attributable to operation of the enrichment enterprise prior to enactment and that are not dealt with elsewhere in the legislation will remain liabilities of the United States. At present, the Committee is unaware of any actual liabilities that fall within this category.

CHAPTER 25

Section 1501. Administrator

Under this section, exercise of the powers of the Corporation is vested solely in an Administrator, who is appointed by the President and confirmed by the Senate. The Administrator serves for a fixed term of six years and may be removed in accordance with subsection (b)(7) only by the President and only for neglect of duty or malfeasance in office. Compensation for the Administrator is set by the President based upon recommendations by the Secretary of Energy and the Corporate Board. The President's decision is not subject to otherwise applicable pay caps. In the absence of any determination of compensation by the President, the Administrator's salary is set at Executive Level I.

Subsection (c) provides that the Secretary of Energy shall exercise general supervision over the Administrator only with respect to matters involving the common defense and security and health, safety, and the environment. For all other purposes, the power of the Corporation is solely vested in the Administrator. In particular, notwithstanding contrary provisions of the Government Corporation Control Act, the Administrator has the sole power to declare dividends to be paid to the Treasury as well as sole authority over all other fiscal matters.

Other than the supervisory authority of the Secretary with respect to common defense and security and health, safety and the environment, the Committee does not intend that the Secretary, the Director of the Office of Management and Budget, or any other officer or employee of the Executive Branch exercise any authority over the Administrator, either directly or indirectly.

Section 1502. Delegation

This section is self-explanatory.

Section 1503. Corporate Board

While the Committee is not willing to vest the power of the Corporation in a board of directors, it concludes that the performance of the Corporation should be regularly reviewed by a collegial body having expertise in management and disciplines relevant to the enrichment enterprise. This function will be exercised by the five-member Corporate Board, appointed by the President with the advice and consent of the Senate. This Board is to advise the Administrator and the Secretary on the policies and performance of the Corporation. Because the relationship of the Corporation to its customers is critical to its success, at least one member of the Corporate Board is required to be employed, or previously have been employed, in the management of an electric utility.

In addition, the Committee believes that, when appropriate, the Secretary and the Administrator should be able to refer long-term policy matters and other issues to the Corporate Board for recommendation.

Among its powers, the Corporate Board may recommend removal of the Administrator to the President. The Board may also recommend to the President salaries of the Administrator and up to ten officers of the Corporation which are in excess of Executive Levels I and II, respectively.

The legislation makes members of the Corporate Board subject to federal laws and regulations regarding conflicts of interest. For conflict of interest purposes, the Committee intends that the Corporate Board meet no more than one hundred and thirty days in any three hundred and sixty-five day consecutive period and thus that the members of the Corporate Board be "special Government employees" as defined in 18 U.S.C. 202(a). In addition, the Committee expects the President to take such action under 18 U.S.C. 208(b) as necessary to ensure that the provisions of 18 U.S.C. 202(a) do not apply to any members of the Corporate Board.

Section 1504. Employees of the Corporation

The Committee intends that officers and employees of the Corporation be subject only to ultimate supervision by the Administrator. Although this directive is not intended to prevent a normal chain of command within the Corporation, it does preclude officers and employees from being subject to the supervision of anyone outside the Corporation, including the Secretary of Energy.

Section 1505. Transfer of Property to the Corporation

This section requires the Secretary, as requested by the Administrator, to transfer to the Corporation property used by the enrichment enterprise that will be useful to the Corporation in the performance of its mission, subject to certain qualifications. The Committee expects this transfer process to be accomplished in a cooperative manner.

The Committee believes that, under foreseeable market conditions, the existing gaseous diffusion plant in Oak Ridge, Tennessee and the existing gas centrifuge facilities in Portsmouth, Ohio, cannot be operated profitably. With the exception of equipment needed for replacement parts, these assets are left under the control of the Department. However, the Committee does intend to transfer the enrichment operations office located at the Oak Ridge plant. This office is responsible for operations management of the facilities in Paducah, Kentucky, and Portsmouth, Ohio, as well as other functions.

At such time after the year 2000 that the Secretary determines that the Oak Ridge Gaseous Diffusion Plant should be decontaminated or decommissioned, he is directed to convey the plant to the Corporation for performance of these tasks.

Paragraph (a)(5) provides for the Corporation to receive the Department's stocks of fuel materials except those that have been allocated to national defense activities. For these purposes, the Committee intends that DOE and the Corporation adopt the allocation contained in a memorandum on the use of DOE inventories dated

February 5, 1985, from James W. Vaughan, Jr., Acting Assistant Secretary for Nuclear Energy, and William W. Hoover, Assistant Secretary for Defense Programs, to Donald P. Hodel, Secretary of Energy. A copy of this memorandum is included as Appendix II.

Subsection (b) gives the Corporation the Department's rights and access to AVLIS technology. However, the subsection does not transfer any lasers or other equipment being used in AVLIS research because this equipment is also being used for other government research purposes. The Department, which presently contracts with national laboratories for the performance of AVLIS and other enrichment research, is directed to give the Corporation necessary cooperation and support on a reimbursable basis for purposes of arranging the efficient performance of such research in the future.

However, nothing in this Act should be construed as restricting the Corporation from funding AVLIS research and development activities as necessary to achieve the purposes of this title.

Section 1506. Capital Structure of the Corporation

Subsection (a) provides that the Corporation assumes liabilities of the Department which are chargeable to the unexpected balance of appropriated funds transferred under section 1505.

Subsection (b) provides for the Corporation to issue to the Secretary of the Treasury capital stock which represents an equity investment equal to the book value of assets transferred to the Corporation. The Committee intends that the Corporation value transferred assets for accounting purposes on the basis of their current book value. The most recent formal source of information on the book value of the enrichment enterprise's assets is the 1987 Uranium Enrichment Annual Report. The data contained therein will have to be modified to reflect ordinary value changes, such as depreciation, occurring up to the point of transfer. The Committee intends the value of the natural uranium stockpile transferred to the Corporation to be set at original acquisition cost. The Committee does not intend the value of transferred assets to reflect any imputed interest that certain parties have argued has accrued under the existing section 161v. pricing standard of the Atomic Energy Act.

Although the Secretary of the Treasury holds the stock of the Corporation, all management rights and duties remain vested in the Administrator. Furthermore, any transfer of the capital stock of the Corporation is prohibited, unless specifically authorized specifically in Federal law enacted after enactment of this title.

Subsection (c) directs the Corporation to pay dividends into the General Fund out of earnings as a return on the investment represented by the capital stock, unless there is an overriding need to retain such funds in furtherance of other corporate functions, including but not limited to research and development, capital investiments and establishment of cash reserves.

In deciding to pay, or not to pay, dividends and in setting the amount of such dividends, the Committee intends that the Administrator use reasonable judgement. On one hand, the Administrator must make the expenditures, investments and reservations of funds necessary to maintain the Corporation as a commercial enterprise operating on a profitable and efficient basis. At the same time, however, the Committee expects the Administrator to keep in mind that it is in the interest of the United States to receive a return on the investment represented by the Corporation. Thus, for example, "gold plating" of the Corporation's investments would be contrary to the Committee's intent.

Subsection (d) requires the Corporation within 20 years to repay to the Treasury the amount of $364 million with interest on the unpaid balance. This principal amount is referred to as the "Initial Debt" and represents the total cash cost of outlays from the Treasury to the enrichment program from commencement of the program in 1969 through fiscal year 1986. (A detailed calculation of the $364 million figure is included in this report as Appendix I.) Various parties, notably the General Accounting Office, have asserted in the past that the amount of unrecovered costs of the enrichment program are as large as $9 billion or more under the existing cost-recovery pricing standard set out in section 161v. of the Atomic Energy Act. Although there are those individuals who ascribe some legal validity to these calculations, the Committee chooses not to accept them for the following reasons.

First, as a legal matter these "unrecovered costs" merely constitute the present basis for pricing enrichment services. Under current law they do not constitute an actual debt that can be recovered from enrichment customers. Neither the appropriation accounts of the Federal Budget nor those of the Treasury carry any assigned value that is attributable to this so-called "debt."

Second, a large component of unrecovered costs is derived from the initial value assigned to enrichment program assets when the program began commercial operation in 1969. For the most part, investment in these assets was originally made for military purposes, specifically the production of atomic weapons. Thus, the value of these assets represented sunk costs that had nothing to do with the provisions of commercial enrichment services.

Third, over half of the $8.8 billion figure asserted by GAO as unrecovered cost represents imputed interest. Accrual of this interest is a matter of administrative practices not statutory law. Furthermore, it does not consitute any actual borrowing by the enrichment enterprise. Despite the fact that enrichment customers have funded all assets of the program (with the exception of initial assets and $364 million), imputed interest has accrued and compounded on all program assets and been reduced only by payments to the Treasury. In effect, the imputed interest represents a fixed charge that applies no matter what business situation the enrichment enterprise faces. Such a charge is inconsistent with operation in a competitive world market.

Fourth, the amount of unrecovered costs of the enrichment program that are represented by the book value of existing productive assets is not being lost but rather carried forward on the books of the Corporation as provided in section 1506. To the extent that the Corporation is able to return dividends to the Treasury, consistent with operation in a competitive world market, the United States will in effect receive a return on these investments. To the extent that the Corporation's assets are sold as part of future privatization of the enrichment enterprise, the United States will receive a return of these unrecovered investments.

Fifth, as a practical matter, it is impossible for the enrichment program to recover the higher estimate of unrecovered costs as a formal debt and also remain competitive in the world market for enrichment services.

For all these reasons, the Committee concludes that it is both fair and necessary to establish the formal recovery of so-called "unrecovered costs." Thus, subsection (e) provides that the United States shall receive its unrecovered costs solely from (1) receipt of the capital stock of the Corporation (which carries with it the right to receive dividends and the proceeds of any eventual sale of the stock) and (2) repayment of the $364 million Initial Debt.

Section 1507. Borrowing

This section authorizes the Corporation to finance its operation with the issuance of bonds and other forms of indebtedness up to $2.5 billion. This indebtedness would be secured by revenues of the Corporation. Such bonds shall be payable solely by the Corporation and will not constitute obligations of the United States. The Corporation may enter into binding convenants with bondholders, concerning the establishment of reserve funds and other appropriate matters, for purposes of enhancing the marketability of such bonds. The Corporation is exempted from the requirements of the Government Corporation Control Act concerning the issuance of obligations and is exempted from the requirements of the Securities and Exchange Act of 1933.

Further, any bonds issued by the Corporation under this section will not be backed by the full faith and credit of the United States. The principal of and interest on such bonds are instead to be paid solely from revenues of the Corporation. The authority to incur such indebtedness is fully authorized by this statute, without the need for further appropriations.

Section 1508. Pricing

This section in effect requires the Corporation to set commercial enrichment prices on the basis of the competitive world market for enrichment services. The Committee believes that, under the pricing policies in the legislation, the Corporation will be able both to operate profitably and be competitive with foreign suppliers of enrichment services. However, should the world market price dip below a level that permits full recovery of the Corporation's costs, the Corporation is authorized to price its commercial services according to the market with no necessary expectation that these costs will be recovered at a later time. In short, recovery of costs and profitability are goals of the Corporation over the long term, but not legal requirements that must be satisfied when business conditions make their satisfaction impractical.

The Committee generally intends that the sufficiency of the Corporation's commercial pricing policies be judged over the long term and in the context of business conditions prevailing over the long-term. No attempt has been made to define the "long-term" because the Corporation's pricing requirement is inherently subjective and significantly dependent upon the business judgment of the Administrator. Similarly, the Committee is aware that for various reasons the world market price for enrichment services is in actuality likely to consist of a band of prices rather than a single number. The Corporation's approach to this and other specific issues must again be decided as a matter of business judgment. However, this judgment must of course be guided by the provisions of this section and ultimately the purposes of Title II of the Atomic Energy Act.

In contrast to the pricing scheme applicable to commercial customers, the Corporation is directed to price its low assay enrichment services provided to the Department on the basis of yearly cost recovery but without recovery of profit or repayment of the Initial Debt. However, the base charge paid by the Department in a given year is limited to the average base price paid by commercial customers. If this ceiling does not permit the Corporation to recover fully the costs of providing these services to the Department, the unrecovered costs can be recovered from the Department in later years. For these purposes, the base charge means the amount paid by a customer per separative work unit for low assay enrichment services (exclusive of any credits received under a voluntary overfeeding program), less the portion of such amount which represents the costs of decommissioning, decontamination and remedial action.

For high assay enrichment services provided to the Department, the Corporation is directed to price so as to recover its costs on a yearly basis, excluding repayment of the Initial Debt and profit. If the Department does not request any high assay enrichment services in a given year, it must nevertheless reimburse the Corporation for the costs of maintaining the minimum level of operation of the high assay production facility.

In general, the Corporation is required in its prices to recover the costs of decontamination, decommissioning and remedial action for the Corporation's property. The costs recovered must be sufficient to pay for decontamination, decommissioning and remedial action for particular property as of the point in time such actions are to be taken. In addition, subsection (d)(1) establishes as a milestone that by the year 2000, 50 percent of the costs of decontamination and decommissioning for all property transferred to the Corporation (including the Oak Ridge Gaseous Diffusion Plant) must be recovered and deposited in the Uranium Enrichment Decontamination and Decommissioning Fund.

Under subsections (d)(2) and (d)(3), the Corporation (and with respect to the Oak Ridge plant, the Secretary) is required to periodically estimate the costs of decontamination and decommissioning. If such estimates indicate that a shortfall in funding has occurred, the Committee intends this amount to be recovered prospectively from customers.

Subsection (d)(4)(A) provides for dividing cost responsibility for decontamination, decommissioning and remedial action of low assay property between commercial customers and the Department in proportion to the production of separative work for each over the life of the property in question. In setting out this principle, the Committee does not intend to preclude reasonable and practical methods for estimating respective responsibilities for decontamination and decommissioning, even if these methods do not yield absolutely precise results.

Section 1509. Audits

Annual audits are required to be performed according to Generally Accepted Accounting Principles using standards appropriate for commercial corporate transactions. Thus, the Committee intends that the Corporation structure its books so as to meet these standards.

Section 1510. Reports

This section contains self-explanatory annual reporting requirements.

Section 1511. Control of information

The Corporation will be guided by the same principles as those that apply to the Department concerning the exchange of restricted data and the dissemination of scientific and technical information relating to atomic energy. No contracts will be allowed between the Corporation and another person unless that person agrees in writing not to permit any individual access to restricted data until the Office of Personnel Management has made an investigation of the character, associations, and loyalty of the individual, and reports to the Corporation that such access will not endanger the common defense and security. Furthermore, the Corporation will not employ or permit any individual access to restricted data without the same investigation and report, unless the access is determined by the Corporation to be consistent with the national interest.

Section 1512. Patents and inventions

Subsection (a) states that the Corporation will have the same rights to inventions or discoveries conceived by contractors of the Corporation as the Department does with its contractors. Subsection (b) directs the Department to notify the Corporation and allow access to any reports or patent applications it receives that involve matters that are the responsibility of the Corporation. These reports and applications will be held in strictest confidence by the Corporation. It will not release the information without approval of the inventor or owner except to carry out any legal provisions or under special circumstances determined by the Corporation.

Subsections (c) and (d) state that the Corporation may at any time apply for a patent license from the Department when the use is within the Corporation's authority. Subsection (e) provides that the Corporation will not be held liable for any damages due to the imposition of secrecy orders on any patents or reports. Subsection (f) states that the Corporation shall not have to pay any awards or settlements based on claims of patent infringement except to the extent that the judgment is attributable to activities of the Corporation after its date of incorporation.

Subsection (g) directs the Corporation to keep informed of its rights and responsibilities concerning its patents and shall take any appropriate action needed to protect its rights. The Department shall inform the Corporation of any matters affecting the Corporation's rights and responsibilities and will seek and follow as appropriate the advice of the Corporation on these matters.

CHAPTER 26

Section 1601. Licensing

Section 1601 exempts the Corporation and its contractors from Nuclear Regulatory Commission licensing requirements with respect to the existing gaseous diffusion plants to the same extent as the Department and its own contractors receive exemption. This exemption lasts unless and until such point is the Corporation and its contractors receive all necessary licenses with respect to the existing gaseous diffusion plants.

The section provides a schedule and special conditions for the licensing process. Within two years of enactment, the NRC is to promulgate, in consulation with the Environental Protection Agency, regulations for licensing the facilities. Within one year thereafter the Corporation must apply for a license. While the Committee believes that it would be appropriate for the existing gaseous diffusion plants to remain unlicensed while in the hands of a Federal government corporation, application for licensing is required in recognition that, should the decisions to privatize the Corporation be made, licensing of the Corporation's facilities will be a prerequisite.

Apart from licensing, the Corporation will be subject to existing restrictions in the Atomic Energy Act concerning transfer and delivery of source, special nuclear and byproduct materials and production and utilization facilities. The Corporation will also be subject to the jurisdiction of the Nuclear Regulatory Commission and the Department of Transportation concerning packaging and transportation of source, special nuclear and byproduct materials.

Section 1602. Exemption from taxation and payments in lieu of taxes

This section is generally self-explanatory. The Committee intends that, notwithstanding any other provision of law, the Corporation, as a Federal Government entity, shall be exempt from Federal income taxation in the same manner as the Department of Energy.

Section 1603. Miscellaneous applicability of the Atomic Energy Act

Subsection (a) of this section makes various requirements and authorities under the Atomic Energy Act applicable to the Corporation. These include: (1) a requirement that the Corporation report suspected violations of the antitrust laws (section 105(b)); (2) exemption of Corporation contractors from atomic energy licensing (section 110); (3) a grant to the Corporation of the power to issue subpoenas and give oaths to witnesses (section 161(c)); (4) authorization for Corporation employees and employees of contractors to carry firearms and make arrests (section 161(k)); (5) authorization to issue easements and rights of way across real property of the Corporation (section 161(q)); (6) prohibition on cost-plus-percentage-of-cost contracting (section 165(a)); (7) authorization for the President to use the services of other agencies in protecting restricted data and property of the Corporation (section 221(a); (8) provision of criminal penalties for photographing sensitive installations and equipment of the Corporation (section 230); (9) provisions for regulations and criminal penalties for trespass on facilities (section

229); and (10) authorization for the Attorney General to seek injunctions in the name of the United States at the request of the Corporation for violations of the Atomic Energy Act (section 232).

Subsection (b) allows the Secretary to provide for the operation of licensed facilities of the Corporation when a license has been revoked, but operation of the facility in question is required by the public convenience and necessity.

Section 1604. Cooperation with other agencies

This section is self-explanatory.

Section 1605. Applicability of antitrust laws

The Committee believes that it is inappropriate to make the Corporation and its officers and employees subject to the antitrust laws because the Corporation remains part of the Federal Government. Instead, the legislation generally requires the Corporation to conduct its activities in a manner consistent with the policies expressed in the antitrust laws. In particular, the Committee intends the Corporation to avoid any collusive behavior with foreign competitors or otherwise act in an anticompetitive manner. The Committee believes that the instances in which the common defense and security or other aspects of the public interest outweigh the aspects of the public interest protected by antitrust policies will be rare, but in such instances the Corporation should act as the overall public interest requires.

Section 1606. Nuclear hazard indemnification

Prior to the licensing of any of the Corporation's facilities, this section requires the Secretary to indemnify the Corporation's contractors for nuclear hazard liability under the Price-Anderson Act in the same manner as the Secretary indemnifies the Department's contractors. As a Federal entity, prior to licensing the Corporation's own liability for nuclear hazards will be handled under the Federal Tort Claims Act. After licensing, the Corporation and its contractors will be treated under the Price-Anderson Act in the same manner as other licensees of the Nuclear Regulatory Commission with respect to licenses issued to the Corporation.

Section 1607. Intent

This section is self-explanatory.

Section 1608. Report

This section provides for a report no earlier than January 1993 by the Administrator and the President concerning privatization of the Corporation. By deferring any decision on privatization, the Committee does not intend to indicate its approval or disapproval of privatization of the Corporation. Rather, the Committee is deferring such a decision until after the Corporation has obtained operational status and its economic viability can be judged.

CHAPTER 27

Section 1701. Establishment of Decontamination and Decommissioning Fund

This section establishes the Uranium Enrichment Decontamination and Decommissioning Fund. Its provisions are self-explanatory.

Section 1702. Deposits

The provisions of this section are self-explanatory.

Section 1703. Performance and disbursements

The provisions of this section are self-explanatory.

Section 113. Treatment of the Corporation as being privately-owned for purposes of the applicability of environmental and occupational safety laws

The provisions of this section are self-explanatory.

Section 114. Miscellaneous provisions

Subsection (a) makes a conforming change to the Government Corporation Control Act. Subsections (b) and (c) of this section make conforming technical changes to the Atomic Energy Act.

Subsection (d) provides in paragraph (1) that, except for purposes of export, enrichment facilities and related equipment shall not be considered production or utilization facilities under the Atomic Energy Act. The effect of this change is to allow the Corporation and other firms to obtain NRC licenses for new enrichment facilities under the less burdensome provisions applicable to the handling of source or special nuclear materials under the Atomic Energy Act and 10 C.F.R. Parts 40 and 70. However, materials handling licenses under parts 40 and 70 do not apply to or regulate enrichment facilities until they perform enrichment and thus create a source or special nuclear materials. Nevertheless, it is important from the standpoint of the common defense and security to monitor all facilites that may be capable of enriching uranium, as well as those that have actually performed enrichment. Thus, paragraph (2) of subsection (d) requires the Nuclear Regulatory Commission to promulgate regulations for purposes of regulating the control, ownership and possession of new uranium enrichment facilities. Paragraph (3) of subsection (d) makes conforming changes to the Atomic Energy Act for purposes of clarifying that private ownership of enrichment facilities is permitted. Paragraph (4) provides criminal penalties for sabotage of licensed enrichment facilities. Paragraph (5) exempts the Corporation's facilities from oversight by the Defense Nuclear Facilities Safety Board.

The Committee believes it is appropriate to license new enrichment facilities under the less burdensome standards applicable to the handling of source and special nuclear materials, rather than as production and utilization facilities as provided under existing law. Production and utilization facilities include nuclear reactors, and the standards for licensing such facilities are stringent primarily because of attendant radiological hazards. Enrichment facilities, however, involve almost no radiological hazard, but rather a chemical one. In addition, unlike the situation involving reactors, there is extensive knowledge of the hazard associated with enrichment facilities that has been derived from actual worst case accidents. The threat to public health and safety from accidents at enrichment facilities is much less than that associated with nuclear reactors and thus justifies less burdensome licensing requirements.

Subsection (e) has the effect of exempting the Corporation from sequestration occurring as a result of the maximum deficit amount being exceeded under the Gramm, Rudman, Hollings Act.

Finally, subsection (f) repeals section 306 of Title III of the Energy and Water Development Appropriations Act, 1988, which forbids the study of privatization of the enrichment enterprise.

Section 115. Limitation on Expenditures

This section limits FY 1990 expenditures of the Corporation to an amount no greater than its receipts.

Section 116. Severability

This section is self-explanatory.

Section 117. Effective date

This section is self-explanatory.

TITLE II—URANIUM

Subtitle A—Short Title, Findings and Purpose, Definitions

Title II may be cited as the "Uranium Security and Tailings Reclamation Act of 1989."

Section 202. Findings and purpose

This section is self-explanatory.

Section 203. Definitions

This section is self-explanatory.

Subtitle B—Uranium Revitalization

Section 210. Voluntary overfeed program

This section provides that the Corporation shall establish, for a period of not less than 5 years commencing at the beginning of fiscal year 1991, a voluntary overfeeding program which shall be made available to the Corporation's enrichment services customers. These customers may elect to deliver additional amounts of uranium over and above those required at the transactional tails assay. The term "overfeeding" means the use of this additional uranium in the enrichment process. The effect of overfeeding is to reduce power costs otherwise incurred by the enrichment enterprise. Under this program, customers who supply additional uranium for purposes of overfeeding are to be credited with the value of the reduced power costs.

In the recent past the enrichment enterprise has engaged in overfeeding to reduce its costs by using its own stockpile of natural uranium feed materials. This stockpile is now nearly exhausted. Thus, offering the option of overfeeding to customers with provisions for the crediting of power savings does not at this point deprive the enrichment enterprise of any economic opportunity.

The effect of the overfeeding program should be to produce a modest increase in the demand for domestic uranium. One reason for the current low level of demand for domestic uranium by U.S. utilities is the existence of large inventories held by utilities. The overfeeding program will encourage the reduction of these inventories through its use in overfeeding.

The Corporation shall operate the voluntary overfeeding program in such a manner as to make the program as economically attractive as possible to its enrichment services customers for the purpose of encouraging and facilitating the use of uranium for overfeeding by such customers pursuant to this section.

Section 211. National Strategic Uranium Reserve

This section establishes the National Strategic Uranium Reserve consisting of 50,000,000 pounds of uranium. Use of the reserve is restricted to military and government research purposes. The amount of uranium provided for the reserve is approximately the same as the amount of uranium which is in current stockpiles and allocated to national defense activities of the Department of Energy.

In 1985, the Secretary of Energy allocated from existing stocks 68,900,000 pounds of uranium to meet future defense-related needs. The balance of the uranium inventory was allocated to commercial uses. The defense allocation is projected to be 50,185,000 pounds as of September 30, 1989. This section formalizes the existing state of affairs. The intent of this section is to ensure that the existing stockpile reserved for defense purposes is not available for overfeeding.

Section 212. Responsibility for the industry

This section creates a continuing responsibility in the Secretary of Energy to take any action he determines to be appropriate under existing law to encourage the use of domestic uranium. In fulfilling that responsibility, however, the Secretary is prohibited from using any supervisory authority that he has over the Administrator of the United States Enrichment Corporation under section 1501(c) of Title II of the Atomic Energy Act, as amended.

Subsection (b) creates a specific responsibility in the Secretary consistent with subsection (a). The Department of Energy, in cooperation with the Department of Commerce, the U.S. Trade Representative and other governmental organizations is directed to encourage the export of domestic uranium. The Secretary is required within 180 days of enactment to develop recommendations and implement programs to promote the export of domestic uranium.

Section 213. Government uranium purchases

This section restricts purchases of uranium by the United States, its agencies and instrumentalities to uranium which is of domestic origin and which is purchased from domestic uranium producers. The section does not apply to the Tennessee Valley Authority.

Section 214. Secretary's authority to make regulations

This section is self-explanatory.

Subtitle C—Remedial Action for Active Processing Sites

Section 220. Remedial action program

This section establishes a program for the reimbursement of the costs of reclamation, decommissioning and other remedial action that are attributable to tailings which have been generated as an incident of sales to the United States and which are located at active uranium and thorium processing sites. The provisions of the section are largely self-explanatory.

Subsection (b)(2)(D) provides for annual escalation (based on an inflation index) of the various ceilings on reimbursement setout in subparagraphs (A), (B) and (C). This annual escalation is only intended to apply to the remaining amounts within the ceilings that have not been paid in reimbursement as of such point.

Subsection (b)(2)(E) allows the Secretary of Energy to provide reimbursement in excess of the otherwise applicable $4.50 per dry short ton limit on reimbursement in certain circumstances. Additional reimbursement under this subparagraph is only intended to be available for the costs of reclamation, decommissioning and other remedial action which are attributable to tailings generated as an incident of sales to the United States.

Section 221. Regulations

This section is self-explanatory.

Section 222. Authorization

This section authorizes the appropriation of $300,000,000 for purposes of Subtitle C of Title II of the legislation. On an annual basis after the date of enactment, the unappropriated balance of this amount is to be increased based on an inflation index determined by the Secretary. This section does not create an entitlement.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 29, 1989.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 83, the Comprehensive Uranium Act of 1989, as ordered reported by the Senate Committee on Energy and Natural Resources, June 7, 1989.

IMPACT ON THE FEDERAL BUDGET

The major potential short-term budget impact of the bill would result from creating a new Uranium Enrichment Corporation, which would carry out functions currently performed by the Department of Energy (DOE). The new corporation would not be subject to annual appropriations, and would have the authority to spend any funds obtained from the sale of enriched uranium or through borrowing from the public. Over the 1990-1994 period, CBO estimates that the corporation would spend an average of about $1.5 billion a year and take in slightly more, on average, in commercial receipts; net outlays (excluding intra-governmental transactions) would be about −$0.1 billion over the five-year period.

Whether this change would significantly affect the government's spending for uranium enrichment over the next few years depends on what appropriations would otherwise be. CBO estimates that establishment of the Uranium Enrichment Corporation would result in net outlays greater than under the CBO baseline. The latter includes the same estimates of receipts, but approximately $1 billion less in spending over the 1990-1994 period, based on inflating the 1989 appropriation. The Administration's budget proposal, on the other hand, would result in spending and receipts at about the levels that we estimate for the new corporation. We cannot predict whether uranium enrichment spending under S. 83 would exceed that under annual appropriations, but that result is possible, since the enrichment program would no longer have to compete with other federal programs for appropriations.

There are some costs for creating the proposed corporation that would not otherwise be incurred. CBO estimates that setting up the corporation would require up to 45 million in administrative and legal costs in 1990. S. 83 would also require the corporation to make payments to states, in lieu of taxes, which we estimate would total $5 million to $15 million per year starting in 1990. In addition, S. 83 would result in $300 million of additional spending, indexed to inflation and subject to appropriations, to fund remedial actions at uranium and thorium processing facilities. CBO estimates that most, if not all, of the $300 million would be spent after 1994.

Other provisions of the bill would not have any significant budget impact in the 1990-1994 period.

BILL PURPOSE

S. 83 would establish a wholly owned government corporation to replace the existing DOE program for providing uranium enrichment services to commercial nuclear powerplants and to defense programs. Key features of the proposed corporation are summarized below.

> The bill would set the corporation's initial debt as $364 million, payable with interest to the Treasury over a period of 20 years. Under S. 83, payment of the $364 million debt would constitute all of the recovery of past costs associated with the uranium enrichment program. By contrast, the General Accounting Office (GAO) estimates that unrecovered federal costs for uranium enrichment now total about $10 billion.
>
> S. 83 would provide the uranium enrichment corporation with up to $2.5 billion in borrowing authority, but would not

allow the corporation to borrow from the Treasury's Federal Financing Bank. The corporation would fund its spending through a combination of its revenues and borrowing from the public. Under current law, the Congress provides an annual appropriation to fund the DOE program.

The proposed corporation would be managed by an Administrator and a corporate board, both appointed by the President. The Secretary of Energy would have general supervision over the Administrator for health, safety, environmental, and national security concerns.

The bill would transfer current DOE production facilities for uranium enrichment to the corporation. The corporation would then issue capital stock to the Treasury to represent the book value of assets transferred. DOE estimates that the uranium enrichment enterprise has a current value of about $3 billion.

S. 83 would require the corporation to set prices to (1) recover its initial debt; (2) pay for its costs of service; (3) recover costs of decontamination and decommissioning; and (4) provide a "normal business" profit—to be paid in dividends to the Treasury.

The bill would exempt the corporation from sequestration under the Balanced Budget Act (Gramm-Rudman-Hollings). The corporation's spending would not be subject to annual appropriations, or to apportionment by the Office of Management and Budget.

The bill would establish a fund for the decontamination and decommissioning (D&D) of uranium enrichment facilities. S. 83 would also attempt to revitalize the domestic uranium industry by:

Establishing a program that could lead to increased purchases of domestic uranium by nuclear utilities;

Establishing a national strategic uranium reserve, (consisting of uranium stocks currently held by the U.S. government);

Directing the Secretary of Energy to encourage the use of domestic uranium, including encouraging the export of domestic uranium;

Requiring the federal government to purchase only domestic uranium for defense needs; and

Establishing a program for partial reimbursement, by the federal government, of remedial action at active uranium and thorium processing sites. The bill authorizes $300 million for this purpose.

BASIS OF ESTIMATE

Projected Corporation Spending.—The CBO baseline for uranium enrichment spending, based on inflating the 1989 appropriation of $1.1 billion, averages about $1.3 billion over the 1990–1994 period. Since CBO projects that the proposed corporation would spend an average of about $1.5 billion per year over the same period, we estimate that S. 83 would result in uranium enrichment spending that is about $200 million per year higher than the CBO baseline. This estimated increase is approximately the same as proposed in the Administration's budget for fiscal year 1990.

Spending under current law may well be higher than the CBO baseline, because the DOE program currently faces a significant increase in costs necessary to meet both the production requirements for enrichment services and a continuation of ongoing research, environmental control, and construction projects. In particular, electric power costs for the program will increase by more than $200 million from fiscal year 1989 to 1990, because production will have to increase to meet demand. Hence, even if the Congress does not establish a uranium enrichment corporation, program spending is likely to increase beyond CBO baseline levels.

Uranium Enrichment Receipts.—About 85 to 90 percent of the uranium enrichment receipts come from commercial electric utilities. CBO estimates that commercial receipts would average about $1.5 billion for the 1990–1994 period. In addition, the corporation would receive an average of about $200 million per year in receipts for defense enrichment services, paid from appropriations for the defense weapons program. Since these defense transactions are intra-governmental, they have no net impact on the federal budget.

Nearly all of the projected commercial demand for the 1990–1994 period is already under contract, and DOE has recently announced that it plans to raise regular prices for commercial services to keep them near the contractual ceiling for existing utility services, (about $120 per basic unit of enriched uranium). As a result, CBO does not project any difference in commercial receipts under S. 83 over the 1990–1994 period, as compared to current law.

Commercial receipts for uranium enrichment services could be lower under current law if the Congress does not appropriate enough funds to meet minimum operating requirements for the program. Under S. 83, the corporation would have the flexibility and the resources to meet minimum operating costs in all years. Hence, the bill would provide a somewhat greater likelihood of obtaining all potential commercial receipts.

S. 83 would result in higher levels of receipts for defense enrichment services than under current law, because of a required pricing change to reflect the defense portion of D&D costs. This change, however, would have no net budget impact, because the defense appropriations and corresponding enrichment receipts are intra-governmental transactions.

Use of Corporation Borrowing Authority.—Because projected spending would remain below estimated corporation receipts for the 1990–1994 period, CBO does not estimate that the corporation would use any of its $2.5 billion borrowing authority in the near term—except perhaps for some short-term borrowing to meet cashflow requirements. Long-term borrowing would become more likely after 1994, when the corporation may decide to build a new enrichment facility, if new technology and market demand warrants such an expansion.

Voluntary Overfeeding Program.—S. 83 also contains a provision that would encourage commercial customers to buy additional domestic uranium for use by the corporation in producing enriched uranium. The process of using additional uranium as a production feedstock, displacing some of the need for electric power purchases, is called "overfeeding." S. 83 would require the corporation to pass on any power cost savings from overfeeding to the utility customers that provide the additional uranium for this process. As a result, the voluntary overfeeding program would have no net budget impact for the government's enrichment program.

The overfeeding program would begin in fiscal year 1991. Using current prices for domestic uranium, DOE estimates that utilities could achieve some savings in fiscal years 1991 and 1992 by using overfeeding for up to 5 percent of enriched uranium commercial production. According to DOE, the corporation should have access to cheaper electric power after 1992, which would greatly diminish or eliminate any potential utility savings from overfeeding.

Decontamination and Decommissioning (D&D).—S. 83 would establish a fund for the eventual decontamination and decommissioning of uranium enrichment facilities. The three principal facilities are the production plants in Paducah, Kentucky; Portsmouth, Ohio; and Oak Ridge, Tennessee. (The Oak Ridge plant is no longer in active service, but DOE has not conducted any major D&D work for the plant.) Costs to complete D&D will probably total more than $1 billion, in 1989 dollars, per facility. Based on information provided by DOE, CBO does not estimate any significant spending on D&D activities during the 1990–1994 period. In fact, most of the eventual D&D spending will probably take place after the year 2000.

Under S. 83, the corporation would have to set aside, from its receipts, at least 50 percent of estimated total D&D costs by the year 2000. CBO does not estimate any change in commercial receipts over the 1990–1994 period, as a result of this D&D set-aside provision. (As noted above, intra-governmental receipts for defense enrichment services would increase under S. 83.)

Remedial Action.—S. 83 authorizes $300 million in assistance for remedial action at active uranium and thorium processing sites. This authorization would be indexed to inflation, so that total spending would exceed $300 million. Actual spending would depend on the timing of remedial action by site operators, and on Congressional appropriations. CBO estimates that this provision would increase outlays by $300 million (in 1989 dollars), relative to current law; and that most of the outlays would occur after fiscal year 1994, because most of the cleanup at active sites is not likely to occur for several years.

IMPACT ON STATE AND LOCAL GOVERNMENTS

Under S. 83, both Kentucky and Ohio are likely to receive federal payments in lieu of state and local taxes for facilities operated by the proposed uranium enrichment corporation. The corporation would determine the amount of any such payments. Potential payments would depend on estimates of the corporation's annual net income and the value of the corporation's property. Based on tax information provided by the two states, CBO estimates that payments would total between $5 million and $15 million per year.

If you wish additional details on this estimate, we will be pleased to provide them. The CBO staff contact is Peter Fontaine, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the bill as reported.

Title I of the bill establishes the United States Uranium Enrichment Corporation to operate the government's uranium enrichment enterprise as a commercial enterprise on a profitable and efficient basis. This title is not a regulatory measure, and, as such, has no regulatory impact on private firms or businesses.

Title II of the bill establishes a voluntary overfeeding program available to enrichment customers, a uranium reserve, domestic purchase requirements applicable to the government, obligations for the Secretary of Energy to promote the use of domestic uranium, and a funding mechanism for the reclamation of uranium and thorium mill tailings sites. The title does not establish new regulatory requirements for such reclamation, nor does it alter the regulatory scheme within which reclamation would occur.

Modest paperwork requirements would be created in order to ensure accuracy in the operation of the overfeeding program and to ensure that the costs of reclamation at individual sites are properly counted and allocated between the government and the site owners under the formula set forth in the title. Participation in these programs is voluntary.

No personal information would be collected in administering the programs under the bill, and the bill has no impact on personal privacy.

EXECUTIVE COMMUNICATIONS

A legislative report on Amendment 6 to S. 83 dated April 18, 1989 was received by the Committee. The Administration submitted written testimony on the issues addressed in the legislation described herein at the hearings of the Subcommittee on Energy Research and Development on April 19, 1989 and May 11, 1989. These documents are reprinted below:

NUCLEAR REGULATORY COMMISSION,
Washington, DC, April 18, 1989.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your March 17, 1989 request for the Nuclear Regulatory Commission's (NRC's) views on proposed Amendment No. 6 to S. 83, the "Uranium Enrichment Act of 1989." The amendment would establish a wholly-owned Government Corporation to manage the uranium enrichment enterprise. Under this proposed legislation, the NRC would be called upon to license the existing gaseous diffusion enrichment plants as well as any new enrichment facilities.

The NRC takes no position on whether the Corporation's facilities should be licensed or otherwise subject to NRC regulation. It should be noted that the NRC does not now have adequate institutional knowledge to draw conclusions on whether the existing diffusion plants could be licensed. If Congress determines that the facilities should be licensed, the nature and the scope of the NRC licensing review needs to be clearly spelled out in the legislation and additional resources provided to the NRC for the licensing process.

Amendment No. 6 to S. 83 does a reasonable job of seting forth the NRC licensing process to be employed. However, the legislation would be substantially improved if the changes described below are made to the proposal.

The NRC believes that as long as the facility is licensed as a materials licensee (as provided for in section 144(d) of the bill), existing NRC regulations in 10 CFR Parts 40 and 70 would serve as an adequate regulatory framework for licensing enrichment facilities. Accordingly, the staff contemplates that only minor revisions to our regulations would be required. Therefore, the statute (proposed sections 1601 b. and c. of the Atomic Energy Act) should not mandate promulgation of new regulations, but instead authorize the NRC to promulgate regulations and other regulatory guidance as the Commission deems warranted.

The NRC staff also believes that it will take a minimum of two years to review the Corporation's license application and hold public proceedings. Even this projection may be too optimistic. The proposed legislation does not set a timetable for a licensing decision but appears to contemplate that such a decision will be rendered within five years. See proposed section 1608a. of the Atomic Energy Act. If the goal of having the agency make a licensing decision within five years is to be achieved, the legislation should direct the NRC to issue necessary regulatory guidance within two years rather than the four years now set forth in proposed section 160b. of the Atomic Energy Act. The Corporation should submit its application no later than one year after issuance of this guidance. The NRC would then have two years to make its licensing decisions.

Proposed section 160b. provides for certain exemptions from environmental review requirements. It is unclear whether this exemption applies to the promulgation of regulatory guidance or to the licensing process. We presume the latter. Therefore, we recommend that this language should be changed to state that in licensing the existing facilities, NRC shall not consider need for the facilities, alternatives (including alternative sites and designs), or the costs compared to the benefits of these facilities. Further, the NRC staff believes it more appropriate for the legislation to identify the Corporation as the responsible agency to prepare any necessary environmental impact statement. For the licensing process, NRC should be authorized to adopt, to the extent practicable, the Corporation environmental impact statement. This is the approach that Congress included in the Nuclear Waste Policy Act of 1982 (NWPA). Under the NWPA, the Department of Energy will prepare an environmental impact statement to support its high-level waste repository application, and the NRC will adopt it to the extent practicable.

Provisions in Chapter 27, "Decontamination and Decommissioning," are unclear with regard to whether the Corporation would be subject to all aspects of NRC's decommissioning rule. The NRC believes that the Corporation, as a licensee, should be subject to the decommissioning rule both for decommissioning planning requirements and for financial assurance requirements.

Under existing statutes, the Corporation would not be subject to payment of user fees to NRC for licensing and inspection activities. The NRC believes that the Corporation should be subject to payment of fees and therefore recommends that section 161w. of the Atomic Energy Act should be amended to authorize the NRC to charge the Corporation fees.

Section 1606 of the amendment bill provides that the Corporation, for purposes of the Price-Anderson Act, shall be treated in the same manner as Department of Energy contractors. The NRC would suggest that after an enrichment facility receives an NRC license, it should be treated as an NRC licensee for Price-Anderson Act purposes.

Finally, the legislation does not address the issue of who will issue regulations and orders relating to the safe operation of the enrichment facilities during the period before an NRC license is issued. This is an important issue that needs to be addressed. After the facility is licensed, the NRC will have full regulatory and enforcement authority.

We appreciate the opportunity to comment on this legislative proposal.

Sincerely,

LANDO W. ZECH, Jr.,
Chairman.

STATEMENT OF W. HENSON MOORE, DEPUTY SECRETARY OF ENERGY

Mr. Chairman, it is a pleasure to be here today to discuss the Department of Energy's Uranium Enrichment program.

With sales of approximately $1.5 billion annually, the U.S. uranium enrichment enterprise is the leading supplier of uranium enrichment services in the world today. Since the 1970's, when the U.S. was the world's only supplier of enriched uranium, the world market for uranium enrichment services has become highly competitive.

The problem, as you are aware, is that the enterprise is not structured as a business enterprise. Over the last several years, we have had some success improving our competitiveness and retaining our leadership position. But until we gain the freedom and flexibility to operate as our competitors do, the future of the enterprise will remain uncertain.

Successive Administrations and Congresses have reaffirmed that the uranium enrichment enterprise is vital to the national and energy security of the United States. The uranium enriched at our facilities fuels nuclear plants that generate 20 percent of the Nation's electricity and are free of emissions that might contribute to acid rain and global warming. These plants produce electricity on a basis that is equivalent to the avoidance of 10 million tons of SO_2 in the atmosphere each year. They also displace the equivalent of 2.2 million barrels of oil per day, reducing the Nation's reliance on insecure sources of imported oil and our exposure to foreign supply cutoffs and price fluctuations. Enriched uranium fuels 40 percent of the Navy's principal combat ships. Foreign sales of U.S. enrichment services annually reduce the trade deficit by $500 million. In addition, involvement in the international nuclear fuel cycle strengthens the U.S. voice in nonproliferation issues. The question, then, is not whether this important business activity should be sustained, but rather how it should be managed to best serve the Nation.

We now have a Government operation saddled with antiquated accounting requirements and subject to the constraints of the Federal budget process. If forced by non-commercial considerations to price its enrichment services higher than the market will bear, it will be unable to compete for the nearly $5 billion in sales at stake during the 1990s. It could lose all its customers except the U.S. Government, which then would have to shoulder the cost of the enterprise alone. Taxpayers would then have to support the entire cost of operation and infrastructure, pay a higher price for defense enrichment services, pick up the entire tab for environmental restoration and for decontamination and decommissioning of retired facilities, and still have to purchase enriched uranium for one-fifth of the country's electric power needs from foreign sources.

On the other hand, a corporation that is structurally sound and endowed with the flexibility to succeed in the marketplace can immediately take advantage of the existing enterprise's position of leadership. It would be able to institute management, financial, and operational efficiencies to keep its prices competitive. Potentially capable of generating a large positive cash flow by the end of the century, it would pay its own way, including the eventual cleanup of existing facilities. The taxpayer will pay less for defense needs, use domestically-produced enriched uranium for electric power, and see the balance of trade deficit reduced through the export of enrichment services.

A Government corporation, with stock held by the Treasury, not only would be more flexible than a conventional Government agency with respect to marketing, contracting, management and administration, but could begin the process of establishing and sustaining a stable, commercially attractive business. Operation as a Government corporation would provide time to prepare for the possible transition to the private sector by addressing such issues as Nuclear Regulatory Commission licensing. In the future, stock or assets could be sold to one or more purchasers with a view toward creating a privately-owned domestic enrichment industry. We believe that the best way to maximize the return on investment to the taxpayer is through the establishment of a Government corporation and the payment of dividends to the Treasury. In the future, through the potential sale of the stock or assets of the corporation, an even higher return could be achieved.

A corporation would have more flexibility to make sound business decisions based on cost-benefit analyses in the area of technology development than the present structure. Atomic Vapor Laser Isotope Separation, the world's most advanced enrichment technology, has the potential to enrich uranium at about half the cost of the gaseous diffusion process. The corporation would be better able to assess the costs and benefits of this technology and then make a deployment decision.

Improvements can be made to the long-term competitiveness of the uranium enrichment enterprise in the absence of restructuring legislation, but it is my strong belief that they would be temporary in nature and not address the fundamental need for commercial flexibility. DOE has steadily improved its operations since 1984, yet substantial problems remain ahead and I believe we have nearly exhausted the remedies available under existing organizational constraints. While we pursue efficiency and competitiveness along a relatively limited number of paths, our foreign competitors can employ a much wider range of options.

By restructuring the uranium enrichment enterprise, the Administration expects to help achieve the following goals:

Preservation of a strategically important domestic industry;

Recovery of the Government's investment as early as the market permits; and

Ultimate transfer of responsibility for enrichment activities to the private sector in an orderly manner and with a high degree of confidence for financial success.

As you are aware, Mr. Chairman, the Administration has submitted a legislative proposal to Congress to establish a wholly-owned Government corporation to assume the responsibilities of the Department's enrichment program and achieve the above goals.

The specific provisions that will enable the new organization to achieve these goals include:

Specifying a clear, guiding mission;

Establishing a corporation with experienced and highly qualified personnel at all levels;

Allowing the enterprise to make realisitic business judgments based on cost-benefit analyses and conduct its operations without the operational and budgetary limitations presently imposed;

Allowing the enterprise to obtain capital by selling securities, including stocks and bonds, by borrowing, or by other means available to any private corporation;

Permitting flexible, competitive pricing and contract terms;

Enabling the enterprise to develop advanced technologies as needed for future competitiveness; and

Creating a Board of Directors that can provide strong management direction and guidance.

Creation of a Government corporation, capable of competitive and businesslike operation will:

Instill customer confidence in the enterprise as a reliable, economical, long-term supplier of enrichment services;

Increase the return on the taxpayer's investment;

Enhance the value of the Government's investment in the enterprise;

Ensure competitive prices of enriched uranium to commercial customers; and

Ensure that operations are conducted soundly and responsibly with regard to public safety and health, and in full compliance with laws protecting the environment.

Restructuring the enrichment enterprise is the single most critical step we can take to ensure that we continue to provide high quality economical services to industry, the public, and the Nation. Timely, decisive action by the Congress is needed now. We are eager to work with the Congress to refine details as necessary to complete this important action.

STATEMENT OF PHILIP G. SEWELL, DEPUTY ASSISTANT SECRETARY FOR URANIUM ENRICHMENT, U.S. DEPARTMENT OF ENERGY

Mr. Chairman, it is a pleasure to be here today to discuss the United States uranium mining industry.

Nuclear power plays a vital role in the national and energy security of the United States and the domestic uranium mining industry is an important element of this role. Today, nuclear energy provides about 20 percent of the Nation's electricity supply; electricity which is free of harmful emissions and, therefore, which contributes to a clean air environment. Also, approximately 40 percent of the U.S. Navy's active combat fleet is propelled by nuclear fuel. As a result, a healthy, secure indigenous nuclear industry is in our country's best interests.

The domestic supply of uranium has contributed to the increasing importance of nuclear energy in the United States. In making this contribution, concerns have periodicially been expressed about the adequacy of this supply source in the United States. Initially, national security was the prime motivation for creating governmental incentives to establish a viable American uranium mining industry. Then, with the anticipated success of the U.S. civilian nuclear power program, prospects for growth were so bright that in 1964 Congress concluded that "the domestic mining and milling industry could develop normally without future reliance on the U.S. Government for its market."[1] Since the beginning, the Atomic Energy Commission (AEC), the Energy Research and Development Administration (ERDA), and the Department of Energy have taken actions concerning the domestic mining and milling industry that were consistent with, and supportive of, Congressional intent as part of overall national energy policies.

Initially, the AEC was directed not to offer enrichment services for uranium of foreign origin for domestic use. The language of the Atomic Energy Act, however, provided for the AEC to periodically survey the condition of the domestic and world uranium markets and to revise its enrichment criteria from time to time, should conditions warrant. In 1974 the criteria were revised by the AEC to gradually phase out restrictions on the enrichment of foreign origin uranium such that, after 1983, no restrictions would be in effect.

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[1] Senate No. 1325, amending the Atomic Energy Act of 1954, for private ownership of special nuclear materials, Aug. 5, 1964, p. 10.

In 1982, in anticipation of the elimination of restrictions scheduled for 1983, Congress considered and specifically rejected legislation to require mandatory restrictions on the importation of foreign origin uranium. A proposed amendment to the Nuclear Regulatory Commission Authorization Act would have required the Nuclear Regulatory Commission (NRC) to issue criteria restricting the importation of source material and special nuclear material. The conference committee rejected this amendment and reported a bill which contained a provision to require the Secretary, when foreign uranium imports reached a level of 37.5 percent, to revise DOE's enrichment criteria "so as to encourage the use of domestic origin uranium in domestic nuclear powerplants." [2] This provision, however, was rejected by the House of Representatives,[3] and a substitute provision was agreed to by both Houses. In the substitute measure, Section 170(B) of the Atomic Energy Act (codified at 42 U.S.C. 2210(b)), Congress deleted all references to mandatory import restrictions and, instead, provided for, inter alia, (1) an annual viability determination by the Secretary, (2) the possibility of an investigation under Section 201 of the Trade Act, and (3) the requirement that the Secretary request that the Secretary of Commerce initiate an investigation pursuant to 19 U.S.C. 1862 if uranium imports from executed contracts or options are projected at a level of 37.5 percent for a consecutive two-year period.

As part of the 1987 viability determination by DOE, it was determined that executed contracts or options from foreign sources were greater than 37.5 percent of actual or projected domestic uranium requirements for the consecutive 2 year period 1986 and 1987. Therefore, the Secretary requested the Secretary of Commerce to initiate an investigation to determine the effects of imports on national security. We understand that this investigation is expected to be completed by September of this year.

The increased level of imports is just one circumstance among a number of events affecting the domestic mining and milling industry that have recently occurred. In June of 1988, the Supreme Court ruled that DOE was not required to impose enrichment restrictions where such restrictions would not achieve the statutory goal of restoring the domestic mining industry's viability as specified in 161(v) of the Atomic Energy Act. This lawsuit, originally brought against DOE by domestic miners in 1984, was remanded to the U.S. District Court for the District of Colorado, to give domestic miners the opportunity to challenge DOE's conclusion that restrictions on the enrichment of foreign uranium for domestic use would not assure the vaiability of the domestic mining industry. This case was effectively concluded when the miners filed a motion in January 1989, to dismiss the case, without predjudice. The Supreme Court's ruling and the miner's subsequent dismissal of their lawsuit avoided what potentially could have been a disastrous situation for both the U.S. uranium and U.S. enrichment businesses, because enrichment restrictions could have resulted in a significant number of domestic utilities purchasing both their uranium and enrichment services from foreign sources.

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[2] 128 Cong. Rec., S13054 (daily ed., Oct. 1, 1982) (Remarks of Senator Domenici).
[3] Id. at H8809.

Another important event in 1988 involved the congressional ratification of the U.S.-Canada Free Trade Agreement. This agreement provides that, for purposes of Section 161(v) of the Atomic Energy Act, Canadian origin uranium shall be treated identically to domestic origin uranium. In calendar year 1988, about 40 percent of the uranium delivered by domestic customers for enrichment was of foreign origin. Nearly 80 percent of this foreign origin uranium came from Canada. As a result of the Free Trade Agreement, DOE's ability to control the quantities of foreign origin uranium to be enriched by domestic customers in favor of U.S. origin uranium under Section 161(v) of the Atomic Energy Act is extremely limited.

A positive result of actions taken within the U.S. uranium industry involved a major sales effort in Japan. In 1988, DOE encouraged the domestic uranium industry in its foreign sales efforts and the success in obtaining more than $320 million in future contract commitments from Japan was a positive indication of a stronger future. In fact, this success highlights the fact that despite the nonviability determination in 1987 for the industry as a whole, there are a number of producers who are capable of reliably producing competitively priced uranium over the long term.

A more disturbing recent market trend has been the increased availability of enriched uranium from the Soviet Union in world markets at apparently heavily discounted prices. Some of this enriched uranium has breen offered through direct sale to the United States from the Soviet Union or, more often, indirectly through brokered or traded deals where Soviet Union material is first exchanged for non-Soviet origin material held in world inventories. Both the domestic uranium industry and the U.S. enrichment program are affected by the availability of such discounted enriched uranium. Uncommitted domestic demand has been and continues to be subject to penetration from these types of indirect transactions. It has been estimated that as much as $140 million in uranium sales losses and $170 million in enrichment sales losses may have occurred over the last 3 years as a result of these types of transactions. In any event, there appears to be an increasing potential for more sales of this nature in the future and their effect on the domestic uranium and U.S. enrichment program will probably increase. The United States, by virtue of having the world's largest uncommitted requirements, automatically becomes an attractive market.

Finally, Mr. Chairman, as you are aware, last month the Administration submitted legislation to Congress which would restructure the uranium enrichment enterprise by creating a Government corporation. Both this proposal and Senator Ford's amendment to S. 83 would repeal section 161(v). The main reason for this change to the Atomic Energy Act is that the principal purpose of section 161(v), to authorize DOE to provide enrichment services, would be replaced by the assignment of this function to the new corporation. Equally appropriate, I believe, is the elimination of the language regarding import restrictions because, as a commercial entity, an enrichment corporation would not be an appropriate vehicle through which to attempt to impose trade restrictions.

The changes and events that have occurred have reduced the domestic uranium industry to a smaller size. However, it is an industry that is still competitive and capable of providing a reliable source of supply. The combination of domestically supplied and Canadian origin uranium provide an abundant, assured and economical energy supply source that supports our energy security. Certain market forces could threaten the domestic uranium industry, such as the potential increase of material available at discounted prices from market sectors like the Soviet Union. In addition, a large worldwide inventory surplus of uranium exists today that is equivalent to 5 years of demand. Finally, the domestic uranium industry, like many other industries, faces the economic burden of increasingly stringent and costly environmental compliance requirements.

In light of the many pressures facing the domestic uranium industry, a very careful and deliberate review of the most appropriate means for assuring a healthy, reliable supply source is necessary. Proposals made in the past may be obsolete and require reexamination. And, of course, we are facing a number of difficult choices in establishing energy policies and priorities for the Nation, especially in light of the economic realities of Federal budget limitations. The completion of this study on the effect of uranium imports by the Commerce Department in September of this year should provide some additional insight into what, if anything, needs to be done regarding the domestic uranium industry.

The bottom line, Mr. Chairman, is that an approach to ensure the viability of the uranium industry has not yet been identified which is acceptable to all parties. We are prepared to work closely with Congress and the industry toward ensuring the viability of the uranium industry. However, the Administration has serious reservations about Amendment 10 to S.83.

In the meantime, we encourage Congress to move forward with the Administration's legislation to restructure the U.S. enrichment business as a Government corporation. This legislative initiative offers a constructive solution for the problems of this important nuclear business and, as such, we believe that action to pass this legislation should proceed promptly. With the establishment of a competitive, financially healthy enrichment corporation through the cooperative efforts of Congress and the Administration, a vital element in assuring a healthy, secure indigenous nuclear industry will be in place.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by the bill as reported (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law to which no change is proposed is shown in roman):

THE ATOMIC ENERGY ACT OF 1954

AN ACT for the development and control of atomic energy

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

ATOMIC ENERGY ACT OF 1954

TITLE I—ATOMIC ENERGY

CHAPTER 1. DECLARATION, FINDINGS, AND PURPOSE

Sec. 1. Declaration.
Sec. 2. Findings.
Sec. 3. Purpose.

CHAPTER 2. DEFINITIONS

Sec. 11. Definitions.

CHAPTER 3. ORGANIZATION

Sec. 23. Office.
Sec. 24. General Manager, Deputy and Assistant General Managers.
Sec. 25. Divisions, Offices and Positions.
Sec. 27. Military Liaison Committee.
Sec. 28. Appointment of Army, Navy, or Air Force Officers.
Sec. 29. Advisory Committee on Reactor Safeguards.

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CHAPTER 2. DEFINITIONS

SEC. 11. DEFINITION.—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

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v. The term "production facility" means (1) any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission; *Provided, however, That as the term is used in Chapters 10 and 16 of this Act, other* *than with respect to export of a uranium enrichment production facility, it shall not include any equipment or device, or important component part especially designed therefor, capable of separating the isotopes of uranium or enriching uranium in the isotope 235.*

CHAPTER 5. PRODUCTION OF SPECIAL NUCLEAR MATERIAL

SEC. 41. OWNERSHIP AND OPERATION OF PRODUCTION FACILITIES.—a. OWNERSHIP OF PRODUCTION FACILITIES.—The Commission, as agent of and on behalf of the United States, shall be the exclusive owner of all production facilities other than facilities which (1) are useful in the conduct of research and development activities in the fields specified in section 31, and do not, in the opinion of the Commission, have a potential production rate adequate to enable the user of such facilities to produce within a reasonable period of time a sufficient quantity of special nuclear material to produce an atomic weapon; [or] (2) are licensed by the Commission pursuant to [section 103 or 104] *this title; or (3) are owned by the United States Enrichment Corporation.*

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SEC. 53. DOMESTIC DISTRIBUTION OF SPECIAL NUCLEAR MATERIAL. a. The Commission is authorized (i) to issue to transfer or receive in interstate commerce, transfer, deliver, acquire, possess, own, receive possession of or title to, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, special nuclear material, (ii) to make special nuclear material available for the period of the license, and (iii) to distribute special nuclear material within the United States to qualified applicants requesting such material—

(1) for the conduct of research and development activities of the types specified in section 31;

(2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to section 104;

(3) for use under a license issued pursuant to section 103;

(4) for such other uses as the Commission determines to be appropriate to carry out the purposes of this Act.

b. The Commission shall establish, by rule, minimum criteria for the issuance of specific or general licenses for the distinction of special nuclear material depending upon the degree of importance to the common defense and security or to the health and safety of the public of—

(1) the physical characteristics of the special nuclear material to be distributed;

(2) the quantities of special nuclear material to be distributed; and

(3) the intended use of the special nuclear material to be distributed.

(c) (1) The Commission may distribute special nuclear material licensed under this section by sale, lease, lease with option to buy, *or* grant, [or through the provision of production or enrichment services;] *Provided, however*, That unless otherwise authorized by law, the Commission shall not alter after December 31, 1970; distribute special nuclear material except by sale [or through the provision of production or enrichment services] to any person who possesses or operates a utilization facility under a license issued pursuant to section 103 or 104 b. for use in the course of activities under such license; nor shall the Commission permit any such person after June 30, 1973, to continue leasing for use in the course of such activities special nuclear material previously leased to such person by the Commission.

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CHAPTER 14. GENERAL AUTHORITY

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

a. establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, administration, research, and other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board;

b. establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property [.]*; in addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the nation's common defense and security with regard to control, ownership or possession of any equipment or device, or imkportant component part especially designed therefor, capable of separating the isotopes of uranium or enriching uranium in the isotope 235;*

* * * * * * *

[v. (A) enter into contracts with persons licensed under section 53, 63, 103 or 104 for such period of time as the Commission may deem necessary or desirable to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission; and

(B) enter into contracts to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission in accordance with and within the period of an agreement for cooperation arranged pursuant to section 123 while comparable services are made available pursuant to paragraph (A) of this subsection:

Provided, That (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) prices for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; and (iii) any prices estabished under this subsection shall be on a basis of recovery of the Government's costs over a reasonable period of time: *And provided further,* That the Commission, to the extent necessary to assure that maintenance of a viable domestic uranium industry, shall not offer such services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States. The Commission shall establish criteria in writing setting forth the terms and conditions under which services provided under this subsection shall be made available including the extent to which such services will be made available for source or special nuclear material of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States: *Provided,* That before the Commission establishes such criteria, the proposed criteria shall be submitted to the Joint Committee, and a period of forty-five days shall elapse while Congress is in session (in computing the forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days) unless the Joint Committee by resolution in writing waives the conditions of, or all or any portion of, such forty-five-day period.]

[w.] *v.* prescribe and collect from any other Government agency, which applies for or is issued a license for a utilization facility designed to produce electrical or heat energy pursuant to section 103 or 104 b., any fee, charge, or price which it may require, in accordance with the provisions of section 483 a. of title 31 of the United States Code or any other law, of applicants for, or holders of, such licenses.

[x.] *w.* Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 181 of this Act, such standards and instructions as the Commission may deem necessary or desirable to ensure.

(1) that an adequate bond, surety, or other arrangement (as determined by the Commission) will be provided, before termination of any license for byproduct material as defined in section 11 e. (2), by a licensee to permit the completion of all requirements established by the Commission for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, and

(2) that—

(A) in the case of any such license issued or renewed after the date of the enactment of this subsection, the need for long-term maintenance and monitoring of such sites, structures and equipment of termination of such license will be minimized, and, to the maximum extend practicable, eliminated; and

(B) in the case of each license for such material (whether in effect on the date of the enactment of this section or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material is defined in section 11 e. (2), will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring.

Such standards and instructions promulgated by the Commission pursuant to this subsection shall take into account, as determined by the Commission, so as to avoid unnecessary duplication and expense, performance bonds or other financial arrangements which are required by other Federal agencies or State agencies and/or other local governing bodies for such decommissioning, decontamination, and reclamation and long-term maintenance and monitoring except that nothing in this paragraph shall be construed to require that the Commission accept such bonds or arrangements if the Commission determines that such bonds or arrangements are not adequate to carry out subparagraphs (1) and (2) of this subsection.

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CHAPTER 18. ENFORCEMENT

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SEC. 236. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—

a. Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to—

(1) any production facility or utilization facility licensed under this Act;

(2) any nuclear waste storage facility licensed under this Act; **[**or**]**

(3) any nuclear fuel for such a utilization facility, or any spent nuclear fuel from such a facility; *or (4) any uranium enrichment facility licensed by the Commission;* shall be fined not more than $10,000 or imprisoned for not more than ten years, or both.

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CHAPTER 21. DEFENSE NUCLEAR FACILITIES SAFETY BOARD

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SEC. 318. DEFINITION.

As used in this chapter, the term 'Department of Energy defense nuclear facility' means any of the following:

(1) A production facility or utilization facility (as defined in section 11 of this Act) that is under the control or jurisdiction of the Secretary of Energy and that is operated for national security purposes, but the term does not include—

(A) any facility or activity covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval nuclear propulsion program;

(B) any facility or activity involved with the assembly or testing of nuclear explosives or with the transportation of nuclear explosives or nuclear material; or

(C) any facility that does not conduct atomic energy defense activities**[**.**]**

(D) any facility owned by the United States Enrichment Corporation.

(2) A nuclear waste storage facility under the control or jurisdiction of the Secretary of Energy, but the term does not include a facility developed pursuant to the Nuclear Waste

Policy Act of 1982 (42 U.S.C. 10101 et seq.) and licensed by the Nuclear Regulatory Commission.

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TITLE II—UNITED STATES ENRICHMENT CORPORATION

CHAPTER 21. FINDINGS

SEC. 1101. FINDINGS.—The Congress of the United States finds that:

a. The enrichment of uranium is essential to the national security and energy security of the United States.

b. A competitive, well-managed and efficient enrichment enterprise provides important economic benefits to the United States and contributes to a highly favorable foreign trade balance.

c. A strong United States enrichment enterprise promotes United States nonproliferation policies by requiring accountability for United States enriched uranium.

d. The operation of uranium enrichment facilities must meet high standards for environmental health and safety.

e. The operation and management of a uranium enrichment enterprise requires a commercial business orientation in order to engender customer support and confidence, and customers, rather than the taxpayers at large, should bear the costs of commercial uranium enrichment services.

f. The optimal level of expenditures for the uranium enrichment enterprise fluctuates and cannot be accurately predicted or efficiently financed if subject to annual authorization and appropriation.

g. Flexibility is essential to adapt business operations to a competitive marketplace.

h. The events of the recent past, including the emergence of foreign competition, have brought new and unforeseen forces to bear upon the management and operation of the Government's uranium enrichment enterprise.

i. The present operation of the uranium enrichment enterprise must be changed so as to further the national interest in the enterprise and respond to the competitive demand placed upon it by market forces, while continuing to meet the paramount objective of ensuring the Nation's common defense and security.

CHAPTER 22. DEFINITIONS, ESTABLISHMENT OF CORPORATION AND PURPOSES

SEC. 1201. DEFINITIONS.—For the purpose of this title:

a. The term "Secretary" means the Secretary of Energy.

b. The term "Department" means the Department of Energy of the United States.

c. The term "Administrator" means the chief executive officer of the United States Enrichment Corporation.

d. The term "Corporation" means the United States Enrichment Corporation.

e. The term "Corporate Board" means the appointed members of the official advisory panel appointed by the President pursuant to section 1503 of this title.

f. The term "uranium enrichment" means the separation of uranium of a given isotopic content into two components, one having a higher percentage of a fissile isotope and one having a lower percentage.

g. The term "remedial action" has the same meaning as defined in section 120(24) of the Comprehensive Environmental Response, Compensation and Liability Act.

h. The term "decontamination and decommissioning" means those activities undertaken to decontaminate and decommission inactive facilities that have residual radioactive or mixed radioactive and hazardous chemical contamination.

SEC. 1202. ESTABLISHMENT OF THE CORPORATION.—

a. There is hereby created a body corporate to be known as the "United States Enrichment Corporation".

b. The Corporation shall—

(1) be established as a wholly-owned Government corporation subject to the Government Corporation Control Act, as amended (31 U.S.C. section 9101–9109), except as otherwise provided herein; and

(2) be an agency and instrumentality of the United States.

SEC. 1203. PURPOSES.—The Corporation is created for the following purposes:

(1) to acquire feed material for uranium enrichment, enriched uranium, the Department's uranium previously set aside for commercial purposes, and the Department's uranium enrichment and related facilities;

(2) to operate, and as required by business conditions, to expand or construct facilities for uranium enrichment or both;

(3) to market and sell enriched uranium and uranium enrichment and related services to—

(A) the Department for governmental purposes; and

(B) qualified domestic and foreign persons;

(4) to conduct research and development as required to meet corporate objectives for the purpose of identifying, evaluating, improving and testing processes for uranium enrichment;

(5) to operate, as a commercial enterprise, on a profitable and efficient basis; in order to maximize the long term economic value of the Corporation to the United States Government including the payment of dividends to the Treasury as a return on the United States Government investment;

(6) to conduct the business as a self-financing corporation and eliminate the need for appropriations or other sources of Government financing after enactment of this title;

(7) to maintain a reliable and economical domestic source of enrichment services;

(8) to conduct its activities in a manner consistent with the health and safety of the public;

(9) to continue to meet the paramount objectives of ensuring the Nation's common defense and security (including consideration of United States policies concerning nonproliferation of

atomic weapons and other nonpeaceful uses of atomic energy); and

(10) to take all other lawful action in furtherance of the foregoing purposes.

CHAPTER 23. CORPORATE OFFICES

SEC. 1301. CORPORATE OFFICES.—

The Corporation shall maintain an office for the service of process and papers in the District of Columbia, and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. The Corporation may establish offices in such other place or places as it may deem necessary or appropriate in the conduct of its business.

CHAPTER 24. POWERS AND DUTIES OF THE CORPORATION

SEC. 1401. SPECIFIC CORPORATE POWERS AND DUTIES.—

The Corporation—

a. shall perform uranium enrichment or provide for uranium to be enriched by others at facilities of the Corporation; contracts in existence as of the date of enactment of this title between the Department and persons under contract to perform uranium enrichment and related services at facilities of the Department shall continue in effect as if the Corporation, rather than the Department, had executed these contracts;

b. shall conduct, or provide for the conduct of, research and development activities related to the isotopic separation of uranium as the Corporation deems necessary or advisable for purposes of maintaining the Corporation as a continuing, commercial enterprise operating on a profitable and efficient basis;

c. may acquire or distribute enriched uranium, feed material for uranium enrichment or depleted uranium in transactions with—

(1) persons licensed under sections 53, 63, 103, or 104 of title I in accordance with the licenses held by such persons;

(2) persons in accordance with, and within the period of, an agreement for cooperation arranged pursuant to section 123 of title I; or

(3) as otherwise authorized by law;

d. may—

(1) enter into contracts with persons licensed under sections 53, 63, 103, or 104 of title I for such periods of time as the Corporation may deem necessary or desirable, to provide uranium or uranium enrichment and related services; and

(2) enter into contracts to provide uranium or uranium enrichment and related services in accordance with, and within the period of, an agreement for cooperation arranged pursuant to section 123 of title I or as otherwise authorized by law;

e. shall sell to the Department as provided in this title, and without regard to section 57e. of title I or the provisions of 31 U.S.C. 1535, such amounts of uranium or uranium enrichment and related services as the Department may determine from time to time are required: (1) for the Department to carry out

Presidential direction and authorizations pursuant to section 91 of title I; and (2) for the conduct of other Department programs;

f. may grant licenses, both exclusive and nonexclusive, for the use of patent and patent applications owned by the Corporation, and establish and collect charges, in the form of royalties or otherwise, for utilization of Corporation-owned facilities, equipment, patents, and technical information of a proprietary nature pertaining to the Corporation's activities.

SEC. 1402. GENERAL POWERS OF THE CORPORATION.—In order to accomplish the purposes of this title, the Corporation—

a. shall have perpetual succession unless dissolved by Act of Congress;

b. may adopt, alter, and use a corporate seal, which shall be judicially noticed;

c. may sue and be sued in its corporate name and be represented by its own attorneys in all judicial and administrative proceedings;

d. may indemnify the Administrator, officers, attorneys, agents and employees of the Corporation for liabilities and expenses incurred in connection with their corporate activities;

e. may adopt, amend, and repeal bylaws, rules and regulations governing the manner in which its business may be conducted and the power granted to it by law may be exercised and enjoyed;

f. (1) may acquire, purchase, lease, and hold real and personal property including patents and proprietary data, as it deems necessary in the transaction of its business, and sell, lease, grant, and dispose of such real and persoanl property, as it deems necessary to effectuate the purposes of this title and without regard to the Federal Property and the Administrative Services Act of 1949, as amended;

(2) Purchases, contracts for the construction, maintenance, or management and operation of facilities and contracts for supplies or services, except personal services, made by the Corporation shall be made after advertising, in such manner and at such times sufficiently in advance of opening bids, as the Corporation shall determine to be adequate to insure notice and an opportunity for competition: Provided, That advertising shall not be required when the Corporation determines that the making of any such purchase or contract without advertising is necessary in the interest of furthering the purposes of this title, or that advertising is not reasonably practicable;

g. with the consent of the agency or govenment concerned, may utilize or employ the services or personnel of any Federal Government agency, or any State or local government, or voluntary or uncompenstated personnel to perform such functions on its behalf as may appear desirable;

h. may enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its business and on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, territory or possession, or with any political subdivision thereof, or with any person, firm, association, or corporation;

i. may detemine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of this title and other provisions of law specifically applicable to wholly-owned Government corporations;

j. notwithstanding any other provision of law, and without need for further appropriation, may use monies, unexpended appropriations, revenues and receipts from operations, amounts received from obligations issued and other assets of the Corporation in accordance with section 1505, without fiscal year limitation, for the payment of expenses and other obligations incurred by the Corporation in carrying out its functions under, and within the requirements of, this title; and shall not be subject to apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code.

k. may settle and adjust claims held by the Corporation against other persons or parties and claims by other persons or parties against the Corporation;

l. may exercise, in the name of the United States, the power of eminent domain for the furtherance of the official purposes of the Corporation;

m. shall have the priority of the United States with respect to the payment of debts out of bankrupt, insolvent, and decedents' estates;

n. may define appropriate information as "Government Commercial Information" and exempt such information from mandatory release pursuant to 5 U.S.C. 552(b)(3) when it is determined by the Administrataor that such information if publicly released would harm the Corporation's legitimate commercial interests or those of a third party;

o. may request, and the Administrator of General Services, when requested, shall furnish the Corporation such services as he is authorized to provide agencies of the United States;

p. may accept gifts or donations of services, or of property, real, personal, mixed, tangible or intangible, in aid of any purposes herein authorized; and

q. may execute, in accordance with its bylaws, rules and regulations, all instruments necessary and appropriate in the exercise of any of its powers.

r. shall pay any settlement or judgment entered against it from the Corporation's own funds and not from the judgment fund (31 U.S.C. 1304). The provisions of the Federal Tort Claims Act (28 U.S.C. 1346(b) and 2671 et seq.) shall not apply to any claims arising from the activities of the Corporation after the effective date of this statute; Provided, That this subsection shall not apply to liability or claims arising from a nuclear incident, if such incident occurs prior to the licensing of the Corporation's existing Gaseous Diffusion Facilities under Section 1601 of this title.

SEC. 1403. CONTINUATION OF CONTRACTS, ORDERS, PROCEEDINGS AND REGULATIONS.—

a. Except as provided elsewhere in this title, all contracts, agreements, and leases with the Department, and licenses, and privileges that have been afforded to the Department prior to the date of the *enactment of this title and that relate to uranium enrichment, including all enrichment services contracts, power purchase contracts and the December 18, 1987 Settlement Agreement with the Tennessee Valley Authority regarding payment of capacity charges under the Department's two power contracts with the Tennessee Valley Authority, shall continue in effect as if the Corporation had executed such contracts, agreements, or leases or had been afforded such licenses and priviliges.*

b. As related to the functions vested in the Corporation by this title, all orders, determinations, rules, regulations and privileges of the Department shall continue in effect and remain applicable to the Corporation until modified, terminated, superseded, set aside or revoked by the Corporation, by any court of competent jurisdiction, or by operation of law unless otherwise specifically provided in this title.

c. Except as provided elsewhere in this title, the transfer of functions related to and vested in the Corporation by this title shall not affect proceedings judicial or otherwise, relating to such functions which are pending at the time this title takes effect, and such proceedings shall be continued with the Corporation, as appropriate.

SEC. 1404. LIABILITIES.—

Except as provided elsewhere in this title, all liabilities attributable to operation of the uranium enrichment enterprise prior to the date of the enactment of this title remain direct liabilities of the Government of the United States; with regard to any claim seeking to impose such liability, Section 1403 shall not be applicable and the United States shall be represented by the Department of Justice.

CHAPTER 25. ORGANIZATION, FINANCE AND MANAGEMENT

SEC. 1501. ADMINISTRATOR.—

a. The management of the Corporation shall be vested in an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation. The Administrator shall be a person who, by reason of professional background and experience is specially qualified to manage the Corporation; Provided, however, That upon enactment of this title, the President shall appoint an existing officer or employee of the United States to act as Administrator until the office is filled.

b. The Administrator—

(1) shall be the chief executive officer of the Corporation and shall be responsible for the management and direction of the Corporation. The Administrator shall establish the offices, appoint the officers and employees of the Corporation (including attorneys), and define their responsibilities and duties. The Administrator shall appoint other officers and employees as may be required to conduct the Corporation's business;

(2) shall serve a term of six years but may be reappointed;

(3) shall, before taking office, take an oath to faithfully discharge the duties thereof:

(4) shall have compensation determined by the President based upon the recommendation of the Secretary and the Corpo-

rate Board as provided in section 1503(c), except that the absence of such determination compensation shall be set at Executive Level I, as prescribed in 5 U.S.C. 5312;

(5) shall be a citizen of the United States;

(6) shall designate an officer of the Corporation who shall be vested with the authority to act in the capacity of the Administrator in the event of absence or incapacity; and

(7) may be removed from office only by the President and only for neglect of duty or malfeasance in office. The President shall communicate the reasons for any such removal to both Houses of Congress at least 30 days prior to the effective date of such removal.

c. (1) The Secretary shall exercise general supervision over the Administrator only with respect to the activities of the Corporation involving—

(A) the Nation's common defense and security; and

(B) health, safety and the environment.

(2) The Administrator shall be solely responsible for the exercise of all powers and responsibilities that are committed to the Administrator under this title and that are not reserved to the Secretary under paragraph (1), and, notwithstanding the provisions of 31 U.S.C. 9104(a)(4), including the setting of the appropriate amount of, and paying, any dividend under section 1506(c) and all other fiscal matters.

SEC. 1502. DELEGATION.—

The Administrator may delegate to other officers or employees powers and duties assigned to the Corporation in order to achieve the purposes of this title.

SEC. 1503. CORPORATE BOARD.—

There is hereby established a Corporate Board appointed by the President which shall consist of five members, one of whom shall be designated as chairman. Members of the Corporate Board shall be individuals possessing high integrity, demonstrated accomplishment and broad experience in management and shall have strong backgrounds in science, engineering, business and finance. At least one member of the Corporate Board shall be, or previously have been, employed on a full-time basis in managing an electric utility:

a. (1) The specific responsibilities of the Corporate Board shall be to:

(A) review the Corporation's policies and performance and advise the Administrator and the Secretary on these matters; and

(B) advise the Administrator and the Secretary on any other such matters concerning the Corporation as may be referred to the Corporate Board.

(2) The Board shall have the right to recommend removal of the Administrator. In the event such recommendation is made, it shall be transmitted to the President by the Secretary, together with the Secretary's own recommendation on removal of the Administrator.

b. Members of the Board shall be provided access to all significant reports, memoranda, or other written communications generated or received by the Corporation. At the request of the Board, the Corporation shall make available to the Board all financial records, *reports, files, papers and memoranda of, or in use by, the Corporation.*

c. When appropriate, the Corporate Board may make recommendations to the Secretary concerning the compensation to be received by the Administrator and the ten officers of the Corporation who may receive compensation in excess of Executive Level II as provided in section 1504(a). The Secretary shall transmit such recommendations to the President together with the Secretary's own recommendations concerning compensation. In the event that less than three members of the Corporate Board are in office, recommendations concerning compensation may be made by the Secretary alone. The President shall have the power to enter into binding agreements concerning compensation to be received by the Administrator during his term of office and by the ten officers described in section 1504(a) during their term of employment, regardless of any recommendation received or not received under this title.

d. Except for initial appointments, members of the Corporate Board shall serve five-year terms. Each member of the Corporate Board shall be a citizen of the United States. No more than three members of the Board shall be members of any one political party. Of those first appointed, the chairman shall serve for the full five-year term; one member shall serve for a term of four years; one shall serve for a term of three years; one shall serve for a term of two years; and one shall serve for a term of one year.

e. Upon expiration of the initial term, each Corporate Board member appointed thereafter shall serve a term of five years. Upon the occurrence of a vacancy on the Board, the President shall appoint an individual to fill such vacancy for the remainder of the applicable term. Upon expiration of a term, a Board member may continue to serve up to a maximum of one year or until a successor shall have been appointed and assumed office, whichever occurs first.

f. The members of the Corporate Board in executing their duties shall be governed by the laws and regulations regarding conflicts of interest, but exempted from other provisions and authority prescribed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2).

g. The Corporate Board shall meet at any time pursuant to the call of the Chairman and as provided by the bylaws of the Corporation, but not less than quarterly. The Administrator or his representative shall attend all meetings of the Corporate Board.

h. The Corporation shall compensate members of the Corporate Board at a per diem rate equivalent to Executive Level III, as defined in 5 U.S.C. 5314, in addition to reimbursement of reasonable expenses incurred when engaged in the performance of duties vested in the Corporate Board. Any Corporate Board member who is otherwise a Federal employee shall not be eligible for compensation above reimbursement for reasonable expenses incurred while attending official meetings of the Corporation.

i. (1) The Corporate Board shall report at least annually to the Administrator on the performance of the Corporation and the issues that, in the opinion of the Board, require the attention of the Administrator. Any such report shall include such recommendations as the Board finds appropriate. A copy of any report under this subsec-

tion shall be transmitted promptly to the President, the Secretary, the Committee on Energy and Natural Resources of the Senate and to the Speaker of the House of Representatives.

(2) Within 90 days after the receipt of any report under this subsection the Administrator shall respond in writing to such report and provide an analysis of such recommendations of the Board contained in the report. Such response shall include plans for implementation of each recommendation or a justification for not implementing such recommendation. A copy of any response under this subsection shall be transmitted promptly to the President, the Secretary, the Committee on Energy and Natural Resources and to the Speaker of the House of Representatives.

SEC. 1504. EMPLOYEES OF THE CORPORATION.—

Officers and employees of the Corporation shall be officers and employees of the United States:

a. The Administrator shall appoint all officers, employees and agents of the Corporation as are deemed necessary to effect the provisions of this title without regard to any administratively imposed limits on personnel, and any such officer, employee or agent shall only be subject to the supervision of the Administrator. The Administrator shall fix all compensation in accordance with the comparable pay provisions of 5 U.S.C. 5301, with compensation levels not to exceed Executive Level II, as defined in 5 U.S.C. 5313; Provided, that the Administrator may, upon recommendation by the Secretary and the Corporate Board as provided in section 1503(c) and approval by the President, appoint up to ten officers whose compensation shall not exceed an amount which is twenty percent less than the compensation received by the Administrator, but not less than Executive Level II. The Administrator shall define the duties of all officers and employees and provide a system of organization inclusive of a personnel management system to fix responsibilities and promote efficiency. The Corporation shall assure that the personnel function and organization is consistent with the principles of 5 U.S.C. 2301(b) relating to merit system principles. Officers and employees of the Corporation shall be appointed, promoted and assigned on the basis of merit and fitness, and other personnel actions shall be consistent with the principles of fairness and due process but without regard to those provisions of title 5 of the United States Code governing appointments and other personnel actions in the competitive service.

b. Any Federal employee hired before January 1, 1984, who transfers to the Corporation and who on the day before the date of transfer is subject to the Federal Civil Service Retirement System (subchapter III of chapter 83 of title 5, United States Code) shall remain within the coverage of such system unless he or she elects to be subject to the Federal Employees' Retirement System. For those employees remaining in the Federal Civil Service Retirement System, the Corporation shall withhold pay and shall pay into the Civil Service Retirement and Disability Fund the amounts specified in chapter 83 of title 5, United States Code. Employment by the Corporation without a break in continuity of service shall be considered to be employment by the United States Government for purposes of subchapter III of chapter 83 of title 5, United States Code. Any employee of the Corporation who is not within the coverage of the Federal Civil Service Retirement System shall be subject to the Federal Employ-

ees' Retirement System (chapter 84 of title 5, United States Code). The Corporation shall withhold pay and make such payments as are required under that retirement system. Further:

(1) Any employee who transfers to the Corporation under this section shall not be entitled to lump sum payments for unused annual leave under 5 U.S.C. 5551, but shall be credited by the Corporation with the unused annual leave at the time of transfer.

(2) An employee who does not transfer to the Corporation and who does not otherwise remain a Federal employee shall be entitled to all the rights and benefits available under Federal law for separated employees, except that severance pay shall not be payable to an employee who does not accept an offer of employment from the Corporation of work substantially similar to that performed by the employee for the Department.

c. This section does not affect a right or remedy of an officer, employee, or applicant for employment under a law prohibiting discrimination in employment in the government on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicap conditions.

d. Officers and employees of the Corporation shall be covered by chapter 73 of title 5 United States Code, relating to suitability, security and conduct.

e. Compensation, benefits, and other terms and conditions of employment in effect immediately prior to the effective date of this section, whether provided by statute or by rules and regulations of the Department or the executive branch of the Government of the United States shall continue to apply to officers and employees who transfer to the Corporation from other Federal employment until changed by the Corporation in accordance with the provisions of this title.

f. The provisions of sections 3323(a) and 8344 of title 5, United States Code, or any other law prohibiting or limiting the reemployment of retired officers or employees or the simultaneous receipt of compensation and retired pay or annuities, shall not apply to officers and employees of the Corporation who have retired from or ceased previous government service prior to April 28, 1987.

Sec. 1505. TRANSFER OF PROPERTY TO THE CORPORATION.—In order to enable the Corporation to exercise the powers and duties vested in it by this title:

a. The Secretary, as requested by the Administrator, is authorized and directed to transfer without charge to the Corporation all of the Department's right, title, or interest in and to, real or personal properties owned by the Department, or the United States but under control or custody of the Department, which are related to and materially useful in the performance of the functions transferred by this title, including but not limited to the following:

(1) production facilities for uranium enrichment inclusive of real estate, buildings and other improvements at production sites and their related and supporting equipment; Provided, that facilities, real estate, improvements and equipment related to the Oak Ridge Gaseous Diffusion plant in Oak Ridge, Tennessee, and to the gas centrifuge enrichment program shall not transfer under this paragraph except for diffusion cascades and

related equipment needed by the Corporation for replacement parts; provided further that any enrichment facilities retained by the Department shall not be used to enrich uranium in competition with the Corporation. This paragraph shall not prejudice consideration of any site as a candidate site for future expansion or replacement of uranium enrichment capacity.

(2) at such time subsequent to the year 2000 as the Secretary determines that the Oak Ridge Gaseous Diffusion Plant should be decommissioned or decontaminated, or both, the Secretary shall convey without charge equipment and facilities relating to the Oak Ridge Gaseous Diffusion Plant not transferred in paragraph (1) to the Corporation.

(3) facilities, equipment, and materials for research and development activities related to the isotopic separation of uranium by the gaseous diffusion technology.

(4) The Department's stocks of preproduced enriched uranium, but excluding stocks of highly enriched uranium; Provided, that approximately 2 metric tons of the Department's highly enriched uranium shall be loaned to the Corporation as required for working inventory.

(5) the Department's stocks of feed materials for uranium enrichment except for the quantities allocated to the national defense activities of the Department as of the date of enactment.

(A) The Department's stockpile of enrichment tails existing as of the date of enactment, shall remain with the Department.

(B) Stocks of feed materials which remain the property of the Department under paragraph (5) shall remain in place at the enrichment plant sites. The Corporation shall have access to and use of these feed materials provided such quantities as are used are replaced, or credit given, if use by the Department is subsequently needed.

(6) all other facilities, equipment, materials, processes, patents, technical information of any kind, contracts, agreements, and leases to the extent these items concern the Corporation's functions and activities, except those items required for programs and activities of the Department and those items specifically excluded by this subsection

The transfer authorized by this section is not subject to the requirements of section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act.

b. The Secretary is authorized and directed to grant to the Corporation without charge the Department's rights and access to the Atomic Vapor Laser Isotope Separation, hereinafter referred to as "AVLIS", technology and to provide on a reimbursable basis and at the request of the Corporation, the necessary cooperation and support of the Department to assure the commerical development and deployment of AVLIS or other technologies in a manner consistent with the intent of this title.

c. The Secretary is authorized and directed to grant the Corporation without charge, to the extent necessary or appropriate for the conduct of the Corporation's activities, licenses to practice or have practiced any inventions or discoveries (whether patented or unpa-

tented) together with the right to use or have used any processes and technical information owned or controlled by the Department.

d. The Secretary is directed, without need of further appropriation, to transfer to the Corporation the unexpended balance of appropriations and other monies available to the Department (inclusive of funds set aside for accounts payable), and accounts receivable which are related to functions and activities acquired by the Corporation from the Department pursuant to this title, including all advance payments.

e. The President is authorized to provide for the transfer to the Corporation of the use, possession, and control of such other real and personal property of the United States which is reasonably related to the functions performed by the Corporation. Such transfers may be made by the President without charge as he may from time to time deem necessary and proper for achieving the purposes of this title.

f. Title to depleted uranium resulting from the enrichment services provided to the Department by the Corporation shall remain with the Department.

SEC. 1506. CAPITAL STRUCTURE OF THE CORPORATION.—

a. Upon commencement of operations of the Corporation, all liabilities then chargeable to unexpended balances of appropriations transferred under section 1505 shall become liabilities of the Corporation.

b. (1) The Corporation shall issue capital stock representing an equity investment equal to the book value of assets transferred to the Corporation, as reported in the Uranium Enrichment Annual Report for fiscal year 1987, modified to reflect continued depreciation and other usual changes that occur up to the date of transfer. The Secretary of the Treasury shall hold such stock for the United States; Provided, that all rights and duties pertaining to management of the Corporation shall remain vested in the Administrator as specified in section 1501.

(2) The capital stock of the Corporation shall not be sold, transferred, or conveyed by the United States unless such disposition is specifically authorized by Federal law enacted after enactment of this title.

c. The Corporation shall pay into miscellaneous receipts of the Treasury of the United States or such other fund as provided by law, dividends on the capital stock, out of earnings of the Corporation, as a return on the investment represented by such stock. The Corporation shall pay such dividends out of earnings, unless there is an overriding need to retain these funds in furtherance of other corporate functions including but not limited to research and development, capital investments and establishment of cash reserves.

d. The Corporation shall repay within a 20-year period the amount of $364,000,000 into miscellaneous receipts of the Treasury of the United States, or such other fund as provided by law with interest on the unpaid balance from the date of enactment of this title at a rate equal to the average yield on 20-year Government obligations as determined by the Secretary of the Treasury on the date of enactment of this title. The money required to be repaid under this subsection is hereinafter referred to as the 'Initial Debt'.

e. Receipt by the United States of the stock issued by the Corporation (including all rights appurtenant thereto) together with repayment of the Initial Debt shall constitute the sole recovery by the United States of previously unrecovered costs that have been incurred by the United States for uranium enrichment activities prior to enactment of this title.

SEC. 1507. BORROWING.—

a. (1) The Corporation is authorized to issue and sell bonds, notes, and other evidences of indebtedness (hereinafter collectively referred to as "bonds") in an amount not exceeding $2,500,000,000 outstanding at any one time to assist in financing its activities and to refund such bonds. The principal of and interest on said bonds shall be payable from revenues of the Corporation.

(2) Notwithstanding any other provision of law, the Corporation may pledge and use its revenues for payment of the principal of and interest on said bonds, for purchase or redemption thereof, and for other purposes incidental thereto, including creation of reserve funds and other funds which may be similarly pledged and used, to such extent and in such manner as it may deem necessary or desirable.

(3) Notwithstanding any other provision of law, the Corporation is authorized to enter into binding covenants with the holders of said bonds—and with the trustee, if any—under any indenture, resolution, or other agreement entered into in connection with the issuance thereof with respect to the establishment of reserve funds and other funds, stipulations concerning the subsequent issuance of bonds, and such other matters, not inconsistent with this title, as the Corporation may deem necessary or desirable to enhance the marketability of said bonds.

(4) Bonds issued by the Corporation hereunder shall not be obligations of, nor shall payments of the principal thereof or interest thereon be guaranteed by, the United States.

b. Bonds issued by the Corporation under this section shall be negotiable instruments unless otherwise specified therein, shall be in such forms and denominations, shall be sold at such times and in such amounts, shall mature at such time or times not more than thirty years from their respective dates, shal be sold at such prices, shall bear such rates of interest, may be redeemable before maturity at the option of the Corporation in such manner and at such times and redemption premiums, may be entitled to such priorities of claim on the Corporation's revenues with respect to principal and interest payments, and shall be subject to such other terms and conditions, as the Corporation may determine; Provided, that at least fifteen days before selling each issue of bonds hereunder (exclusive of any commitment shorter than one year) the Corporation shall advise the Secretary of the Treasury as to the amount, proposed date of sale, maturities, terms and conditions and expected rates of interest of the proposed issue in the fullest detail possible. The Corporation shall not be subject to the provisions of section 9108 of title 31, United States Code. The Corporation shall be deemed part of an executive department or an independent establishment of the United States for purposes of the provisions of 15 U.S.C. 78c(c).

c. Bonds issued by the Corporation hereunder shall be lawful investments and may be accepted as security for all fiduciary, trust, *and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the United States. The Secretary of the Treasury or any other officer or agency having authority over or control of any such fiduciary, trust, or public funds, may at any time sell any of the bonds of the Corporation acquired by them under this section; Provided, that the Corporation shall not issue or sell any bonds to the Federal Financing Bank.*

Sec. 1508. Pricing.—

a. For purposes of maximizing the long term economic value of the Corporation to the United States Government, the Corporation shall establish prices for its products, materials and services provided to customers other than the Department on a basis that will, over the long term, allow it to recover its costs for providing the products, materials and services; repay the initial debt; recover costs of decontamination, decommissioning and remedial action; and attain the normal business objectives of a profit-making Corporation.

b. The Corporation shall establish prices for low assay enrichment services and other products, materials, and services provided the Department on a basis that will allow it to recover its costs on a yearly basis for providing such low assay enrichment services, products, materials and services, including depreciation and the cost of decontamination, decommissioning and remedial action, but excluding repayment of the Initial Debt and profit. In establishing such prices, the base charge paid by the Department in any given year shall not exceed the average base charge paid by customers other than the Department: Provided, however, that if the imposition of such average base charges as a limitation on the base charge paid by the Department in a given year does not permit the Corporation to fully recover its costs for providing such products, materials and services to the Department then, in subsequent years, the Corporation shall include such unrecovered costs in its prices charged the Department. Base charge shall mean the amount paid by a customer per separative work unit for low assay enrichment services during a given year (exclusive of any credits received under a voluntary overfeeding program), less the portion of such amount which represents the cost of decontamination and decommissioning and remedial action. The average base charge paid by customers other than the Department shall be determined by dividing the estimated total dollar amount of low assay enrichment services sales to customers other than the Department during a given year by the estimated amount of separative work units sold to customers other than the Department during that year. Adjustments between estimated and actual amounts shall be made upon receipt of actual sales data.

c. The Corporation shall establish prices to the Department for high assay enrichment services on a basis that will allow it to recover its costs, on a yearly basis, for providing the products materials or services, including depreciation and the costs of decontamination, decommissioning, and remedial action concerning enrichment property, but excluding repayment of the initial debt and profit. If the Department does not request any enrichment services in a given year, the Department shall reimburse the Corporation for costs required to maintain the minimum level of operation of the high assay production facility.

d. (1) In accordance with the cost responsibilities defined in paragraphs (3) and (4), the Corporation shall recover from its customers in the prices and charges established in accordance with subsection (a), amounts that will be sufficient to pay for the costs of decommissioning, decontamination and remedial action for the various property of the Corporation, including property transferred under section 1505(a) at any time. Such costs shall be based on the point in time that such decommissioning, decontamination and remedial action are to be undertaken and accomplished; provided, that by the year 2000 the Corporation shall have recovered and deposited in the Uranium Enrichment Decontamination and Decommissioning Fund fifty percent of the estimated total costs of decontamination and decommissioning of all property transferred or to be transferred to the Corporation under section 1505, including the Oak Ridge Gaseous Diffusion Plant.

(2) In order to meet the objective defined in paragraph (1), the Corporation shall periodically estimate the anticipated or actual costs of decommissioning and decontamination. Such estimates shall reflect any changes in assumptions or expectations relevant to meeting such objective, including, but not limited to, any changes in applicable environmental requirements. Such estimates shall be reviewed at least every two years.

(3) For purpose of enabling the Corporation to meet the objective defined in paragraph (1) with respect to the Oak Ridge Gaseous Diffusion Plant, the Secretary shall periodically estimate the anticipated costs of decontamination and decommissioning and the time at which such decontamination and decommissioning is to be accomplished. Such estimates shall reflect any changes in assumptions or expectations relevant to meeting such objective, including but not limited to, any changes in applicable environmental requirements. The Secretary shall review such estimates every two years and convey this information to the Corporation.

(4) With respect to property that has been used in the production of low-assay separative work,

> *(A) The cost of decommissioning, decontamination and remedial action that shall be recoverable from customers other than the Department in prices and charges shall be in the same ratio to the total costs of decommissioning, decontamination and remedial action for the property in question as the production of separative work over the life of such property for commercial customers bears to the total production of separative work over the life of such property.*
>
> *(B) All other costs of decommissioning, decontamination and remedial action for such property shall be recovered in prices and charges to the Department.*

(5) With respect to property that has been used solely in the production of high-assay separative work, all costs of decommissioning, decontamination and remedial action shall be recovered in prices and charges to the Department.

SEC. 1509. AUDITS.—In fiscal years during which an audit is not performed by the Comptroller General in accordance with the provisions of 31 U.S.C. 9105, the financial transactions of the Corporation shall be audited by an independent firm or firms of nationally recognized certified public accountants who shall prepare such *audits using standards appropriate for commercial corporate transactions. The fiscal year of the Corporation shall conform to the fiscal year of the United States. The General Accounting Office shall review such audits annually, and to the extent necessary, cause there to be a further examination of the Corporation using standards for commercial corporate transactions. Such audits shall be conducted at the place or places where the accounts of the Corporation are established and maintained. All books, financial records, files, papers, memoranda, and other property of, or in use by, the Corporation shall be made available to the person or persons authorized to conduct audits in accordance with the provisions of this section.*

Sec. 1510. Reports.—

a. The Corporation shall prepare an annual report of its activities. This report shall contain:

(1) A general description of the Corporation's operations;

(2) A summary of the Corporation's operating and financial performance, including an explanation of the decision to pay or not pay dividends; and

(3) Copies of audit reports prepared in conformance with section 1509 of this title and the provisions of the Goverment Corporation Control Act, as amended.

b. A copy of the annual report shall be provided to the President, the Secretary, the Committee on Energy and Natural Resources of the Senate, and the appropriate committees of the House of Representatives. Such reports shall be completed not later than 90 days following the close of each fiscal year and shall accurately reflect the financial position of the Corporation at fiscal year end, inclusive of any impairment of capital or ability of the Corporation to comply with the provisions of this title.

Sec. 1511. Control of Information.—

a. The term "Commission" shall be deemed to include the Corporation wherever such terms appears in section 141 and subsections a. and b. of section 142 of title I.

b. No contracts or arrangements shall be made, nor any contract continued in effect, under Section 1401, 1402, 1403, or 1404, unless the person with whom such contract or arrangement is made, or the contractor or prospective contractor, agrees in writing not to permit any individual to have access to Restricted Data, as defined in section 11 y. of title I, until the Office of Personnel Management shall have made an investigation and report to the Corporation on the character, associations, and loyalty of such individual, and the Corporation shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

c. The restrictions detailed in subsections b., c., d., e., f., g., and h., of section 145 of title I shall be deemed to apply to the Corporation where they refer to the Commission or a majority of the members of the Commission, and to the Administrator where they refer to the General Manager.

d. The Administrator shall keep the appropriate congressional committees fully and currently informed with respect to all of the Corporation's activities. To the extent consistent with the other provisions of this section, the Corporation shall make available to any *of such committees all books, financial records, reports, files, papers, memoranda, or other information possessed by the Corporation upon receiving a request for such information from the chairman of such committee.*

e. Whenever the Corporation submits to the President, or the Office of Management and Budget, any budget, legislative recommendation, testimony, or comments on legislation, prepared for submission to the Congress, the Corporation shall concurrently transmit a copy thereof to the appropriate committees of Congress.

f. The Corporation shall have no power to control or restrict the dissemination of information other than as granted by this or any other law.

SEC. 1512. PATENTS AND INVENTIONS.—

a. The term "Commission" shall be deemed to include the Corporation wherever such term appears in section 152, 153b.(1), and 158 of title I. The Corporation shall pay such royalty fees for patents licensed to it under section 153b(1) of title I as are paid by the Department under that provision. Nothing in title I or this title shall affect the right of the Corporation to require that patents granted on inventions, that have been conceived or first reduced to practice during the course of research or operations of, or financed by the Corporation, be assigned to the Corporation.

b. The Department shall notify the Corporation of all reports heretofore or hereafter filed with it under subsection 151c. of title I and all applications for patents heretofore or hereafter filed with the Commissioner of Patents of which the Department has notice under subsection 151d. of title I or otherwise, whenever such reports or applications involve matters pertaining to the functions or responsibilities of the Corporation in accordance with this title. The Department shall make all such reports available to the Corporation, and the Commissioner of Patents shall provide the Corporation access to all such applications. All reports and applications to which access is so provided shall be kept in confidence by the Corporation, and no information concerning the same given without authority of the inventor or owner unless necessary to carry out the provisions of any Act of Congress.

c. The Corporation, without regard for any of the conditions specified in paragraph 153c. (1), (2), (3), or (4) of title I, may at any time make application to the Department for a patent license for the use of an invention or discovery useful in the production or utilization of special nuclear material or atomic energy covered by a patent when such patent has not been declared to be affected with the public interest under subsection 153b.(1) of title I and when use of such patent is within the Corporation's authority. Any such application shall constitute an application under subsection 153c. of title I subject, except as specified above, to all the provisions of subsections 153 c., d., e., f., g., and h., of title I.

d. With respect to the Corporation's functions under this title, section 158 of title I shall be deemed to include the Corporation within the phrase "any other licensee" in the first sentence thereof and within the phrase "such licensee" in the second sentence thereof.

e. The Corporation shall not be liable directly or indirectly for any damages or financial responsibility with respect to secrecy orders imposed under 35 U.S.C. 181 through 187.

f. The Corporation shall not be liable or responsible for any payments made or awards under subsection 157 b.(3) of title I, or any settlements or judgments involving claims for alleged patent infringement except to the extent that any such awards, settlements or judgments are attributable to activities of the Corporation after the effective date of this title.

g. The Corporation shall keep currently informed as to matters affecting its rights and responsibilities under chapter 13 of title I as modified by this section and shall take all appropriate action to avail itself of such rights and satisfy such responsibilities. The Department in discharging its responsibilities under chapter 13 of title I shall exercise diligence in informing the Corporation of matters affecting the responsibilities and jurisdiction of the Corporation and seeking and following as appropriate the advice and recommendation of the Corporation in such matters.

CHAPTER 26. LICENSING, TAXATION, AND MISCELLANEOUS PROVISIONS

SEC. 1601. LICENSING.—

a. Notwithstanding any other provision of law, with respect solely to facilities, equipment and materials for activities related to the isotopic separation of uranium by the gaseous diffusion technology at facilities in existence as of the date of enactment of this title, the Corporation and its contractors are hereby exempted from the licensing requirements and prohibitions of sections 57, 62, 81 and other provisions of title I, to the same extent as the Department and its contractors are exempt in regard to the Department's own functions and activities. Such exemption shall remain in effect unless and until the Corporation and its contractors receive all necessary licenses for such facilities, equipment and materials as are required under title I.

b. Within two years of the enactment of this title, the Commission shall promulgate regulations or issue other regulatory guidance under title I for the licensing of facilities described in subsection (a) that employ the gaseous diffusion technology.

c. Within one year after the promulgation of regulations or the issuance of other regulatory guidance under subsection (b), the Corporation and its contractors shall make necessary applications for and otherwise seek to obtain such licenses as will remove the exemption provided under subsection (a). As part of its application, the Corporation shall submit an Environmental Impact Statement in accordance with the requirements of the National Environmental Policy Act. The Commission shall adopt this statement to the extent practicable under the National Environmental Policy Act. In preparing such statement, the Corporation, and in making any licensing decision, the Commission, shall not consider the need for such facilities, alternatives to such facilities, or the costs compared to the benefits of such facilities. The Commission shall act on licensing requests by the Corporation in a timely manner.

d. The Corporation shall not transfer or deliver any source, special nuclear or by-product materials or production or utilization facilities, as defined in Title I, to any person who is not properly qualified or licensed under the provisions of Title I.

e. The Corporation shall be subject to the regulatory jurisdiction of the Commission and the Department of Transportation with respect to the packaging and transportation of source, special nuclear and by-product materials.

SEC. 1602. EXEMPTION FROM TAXATION AND PAYMENTS IN LIEU OF TAXES.—

a. In order to render financial assistance to those states and localities in which the facilities of the Corporation are located, the Corporation is authorized and directed to make payments to state and local governments as provided in this section. Such payments shall be in lieu of any and all state and local taxes on the real and personal property, activities and income of the Corporation. All property of the Corporation, its activities, and income are expressly exempted from taxation in any manner or form by any state, county, or other local government entity. The activities of the Corporation for this purpose shall include the activities of organizations pursuant to cost-type contracts with the Corporation to manage, operate and maintain its facilities. The income of the Corporation shall include income received by such organizations for the account of the Corporation. The income of the Corporation shall not include income received by such organizations for their own accounts, and such income shall not be exempt from taxation.

b. The Corporation shall make annual payments, in amounts determined by the Corporation to be fair and reasonable, to the state and local governmental agencies having tax jurisdiction in any area where facilities of the Corporation are located. In making such determinations, the Corporation shall be guided by the following criteria:

(1) Amounts paid shall not exceed the tax payments that would be made by a private industrial corporation owning similar facilities and engaged in similar activities at the same location; Provided, however, That there shall be excluded any amount that would be payable as a tax on net income.

(2) The Corporation shall take into account the customs and practices prevailing in the area with respect to appraisal, assessment, and classification of industrial property and any special considerations extended to large-scale industrial operations.

(3) No amount shall be included to the extent that any tax unfairly discriminates against the class of taxpayers of which the Corporation would be a member if it were a private industrial corporation, compared with other taxpayers or classes of taxpayers.

(4) In no event shall the payment made to any taxing authority for any period be less than the payments which would have been made to such taxing authority for the same period by the Department and its cost-type contractors on behalf of the Department with respect to property that has been transferred to the Corporation under section 1505 and which would have been attributable to the ownership, management operation, and maintenance of the Department's uranium enrichment facilities, applying the laws and policies prevailing immediately to the enactment of this title.

c. Payments shall be made by the Corporation at the time when payments of taxes by taxpayers to each taxing authority are due and *payable; Provided, that no payment shall be made to the extent that the tax would apply to a period prior to the enactment of this title.*

d. The determination by the Corporation of the amounts due hereunder shall be final and conclusive.

SEC. 1603. MISCELLANEOUS APPLICABILITY OF TITLE I.—

A. Any references to the term "Commission" or to the Department in sections 105 b., 110 a., 161 c., 161 k., 161 q., 165 a., 221 a., 229, 230 and 232 of title I shall be deemed to include the Corporation.

b. Section 188 of title I shall apply to licensed facilities of the Corporation. For purposes of applying such section to facilities of the Corporation:

(1) The term "Commission" shall be deemed to refer to the Secretary;

(2) There shall be no requirement for payment of just compensation to the Corporation, and receipts from operation of the facility in question shall continue to accrue to the benefit of the Corporation; and

(3) The Secretary shall have the discretion to determine how and by whom the facility in question will be operated.

Sec. 1604. COOPERATION WITH OTHER AGENCIES.—

The Corporation is empowered to use with their consent the available services, equipment, personnel, and facilities of other civilian or military agencies and instrumentalities of the Federal Government, on a reimbursable basis and on a similar basis to cooperate with such other agencies and instrumentalities in the establishment and use of services, equipment, and facilities of the Corporation. Further, the Corporation may confer with and avail itself of the cooperation, services, records, and facilities of state, territorial, municipal or other local agencies.

SEC. 1605. APPLICABILITY OF ANTITRUST LAWS.—

a. The Corporation shall conduct its activities in a manner consistent with the policies expressed in the antitrust laws, except as required by the public interest.

b. As used in this subsection, the term "antitrust laws" means:

(1) The Act entitled: "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (15 U.S.C. 1–7), as amended;

(2) The Act entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (15 U.S.C. 12–27), as amended;

(3) Sections 73 and 74 of the Act entitled, "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; and

(4) The Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

SEC. 1606. NUCLEAR HAZARD INDEMNIFICATION.—

The Administrator shall have the same authority to indemnify the contractors of the Corporation as the Secretary has to indemnify contractors under section 170 d. of title I. Except that with respect to any licenses issued to the Corporation by the Commission, the Commission shall treat the Corporation and its contractors as its licensees for the purposes of Section 170 of this Act.

SEC. 1607. INTENT.—

It is hereby declared to be the intent of this title to aid the Corporation in discharging its responsibilities under this title by providing it with adequate authority and administrative flexibility to obtain necessary funds with which to assure the maximum achievement of the purposes hereof as provided herein, and this title shall be construed liberally to effectuate such intent.

SEC. 1608. REPORT.—

a. Three years after enactment of this title or January, 1993, whichever is later, the Administrator shall submit to the President and to Congress an interim report setting forth the views and recommendations of the Administrator regarding transfer of the functions, powers, duties, and assets of the Corporation to private ownership. Five years after enactment of this title, the Administrator shall submit to the President and the Congress a final report setting forth the views and recommendations of the Administrator regarding transfer of the functions, powers, duties, and assets of the Corporation to private ownership. If the Administrator, in the final report, recommends such transfers, the report shall include a plan for implementation of the transfers.

b. Within 180 days after receipt of the final report under subsection (a), the President shall transmit to Congress his recommendations regarding the report, including a plan for implementation of any transfers recommended by the President and any recommendations for legislation necessary to effectuate such transfers.

CHAPTER 27. DECONTAMINATION AND DECOMISSIONING

SEC. 1701. ESTABLISHMENT.—

a. ESTABLISHMENT OF FUND.—

(1) There is hereby established in the Treasury of the United States an account of the Corporation to be known as the Uranium Enrichment Decontamination and Decommissioning Fund (hereinafter referred to in this chapter as the "Fund"). In accordance with section 1402(j), such account and any funds deposited therein, shall be available to the Corporation for the exclusive purpose of carrying out the purposes of this chapter.

(2) The Fund shall consist of:

(A) Amounts paid into it by the Corporation in accordance with section 1702; and

(B) Any interest earned under subsection (b)(2).

b. ADMINISTRATION OF FUND.—

(1) The Secretary of the Treasury shall hold the Fund and, after consultation with the Corporation, annually report to the Congress on the financial condition and operations of the Fund during the preceding fiscal year.

(2) At the direction of the Corporation, the Secretary of the Treasury shall invest amounts contained within such Fund in obligations of the United States:

(A) Having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Fund, as determined by the Corporation; and

(B) Bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration

the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to such obligations.

(3) At the request of the Corporation, the Secretary of the Treasury shall sell such obligations and credit the proceeds to the Fund.

SEC. 1702. DEPOSITS.—

Within 60 days of the end of each fiscal year, the Corporation shall make a payment into the Fund in an amount equal to the costs of decontamination and decommissioning that have been recovered during such fiscal year by the Corporation in its prices and charges established in accordance with section 1508 for products, materials, and services.

SEC. 1703. PERFORMANCE AND DISBURSEMENTS.—

a. When the Corporation determines that particular property should be decommissioned or decontaminated, or both, or with respect to the Oak Ridge Gaseous Diffussion Plant at such time as the plant is conveyed to the Corporation, the Corporation shall enter into a contract for the performance of such decommissioning and decontamination.

b. The Corporation shall pay for the costs of such decomissioning and decontamination out of amounts contained within the Fund.

JOINT RESOLUTION Making further continuing appropriations for the fiscal year 1988, and for other purposes

[Public Law 100–202]

* * * * * * *

AN ACT Making appropriations for energy and water development for the fiscal year ending September 30, 1988, and for other purposes

* * * * * * *

TITLE III

DEPARTMENT OF ENERGY

* * * * * * *

[SEC. 306. No funds appropriated or made available under this or any other Act shall be used by the executive branch for studies, reviews, to solicit proposals, to consider unsolicited proposals, undertake any initiative or draft any proposals to transfer out of Federal ownership, management or control in whole or in part, the facilities, assets, and functions of the uranium supply and enrichment program, including inventories, until such activities have been specifically authorized in accordance with terms and conditions established by an Act of Congress hereafter enacted; *Provided.* That this provision shall not apply to the authority granted to the Department of Energy under section 161g of the Atomic Energy Act of 1954, as amended, under which it may sell, lease, grant, and dispose of property in furtherance of Atomic Energy Act activities of to the authority of the Administrator of the General Services Administration pursuant to the Federal Property and Administrative Service Act of 1944 to sell or otherwise dispose of surplus property.]

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BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

[Public Law 99-177]

§ 905. Exempt programs and activities

(a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS.—Increases in benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social disability insurance program established under title II of the Social Security Act [42 U.S.C.A. § 401 et seq.], or in benefits payable under section 3(a), 3(f)(3), or 4(f) of the Railroad Retirement Act of 1954 [45 U.S.C.A. §§ 231b(a), 231(f)(3), 231c(a), and 231e(f), shall not be considered "automatic spending increases" for purposes of this title; and no reduction in any such increase or in any of the benefits involved shall be made under any order issued under this subchapter.

(b) VETERANS PROGRAMS.—The following programs shall be exempt from reduction under any order issued under this subchapter;

Veterans' compensation (36-0153-0-1-701); and

Veterans' pensions (36-0154-0-1-701).

(c) NET INTEREST.—Not reduction of payments for net interest (all of major functional category 900) shall be made under any order issued under this subchapter.

(d) EARNED INCOME TAX CREDIT.—Payments to individuals made pursuant to section 32 of the Internal Revenue Code of 1954 [26 U.S.C.A. § 32] shall be exempt from reduction under any order issued under this subchapter.

(e) Offsetting Receipts and Collections.—Offsetting receipts and collections shall not be reduced under any order issued under this subchapter.

(f) CERTAIN PROGRAM BASED.—Outlays for programs specified in paragraph (1) of section 907 of this title shall be subject to reduction only in accordance with the procedures established in section 901(a)(3)(C) and 906(b) of this title.

(g) OTHER PROGRAMS AND ACTIVITIES.—(1) The following budget accounts and activities shall be exempt from reduction under any order issued under this subchapter:

Activities resulting from provide donations, bequests, or voluntary contributions to the Government;

Alaska Power Administration, Operations and maintanence (89-03404-0-1-271);

Appropriations for the District of Columbia (to the extent they are appropriations of locally raised funds);

Bonneville Power Administration fund and borrowing authority established pursuant to section 13 of Public Law 93-454 (1974), as amended (89-4045-0-3-271);

Bureau of Indian Affairs miscellaneous trust funds, tribal trust funds (14-9973-0-7-999);

Claims, defense (97-0102-0-1-51)

Claims, judgments, and relief acts (20-1895-0-1-806);

Coinage profit fund (20-5811-0-2-803);

Compensation of the President (11-0001-0-1-802);

Eastern Indian land claims settlement fund (14-2202-0-1-806);

Exchange stabilization fund (20-4444-0-3-155);

Federal payment to the railroad retirement account (60-0113-0-1-601);

Foreign military sales trust fund (11-8242-0-7-155);

Health professions graduate student loan insurance fund (Health Education Assistance Loan Program) (75-4305-0-553);

Intagovernmental funds, including those from which the oulays are derived primarily from resources paid in from other government accounts, except to the extent such funds are augmented by direct appropriations for the fiscal year during which an order is in effect;

Payment of Vietnam and USS Pueblo prisoner-of-war claims (15-0104-0-1-153);

Payment to civil service retirement and disability fund (24-0200-0-1-805);

Payment to copyright owners (03-5175-0-2-376);

Payment to health care trust funds (75-0580-0-1-572);

Payments to military retirement fund (98-0040-0-1-054);

Payments to social security trust funds (75-0404-0-1-571);

Payments to state and local government fiscal assistance trust fund (20-2111-0-1-851);

Payments to the foreign service retirement and disability fund (11-1036-0-1-153 and 19-0540-0-1-153);

Payments to trust funds from excise taxes or other receipts properly creditable to such trust funds;

Postal service fund (18-4020-0-3-372);

Salaries of Article III judges;

Soldiers and Airmen's Home, payment of claims (84-8930-0-7-705);

Southeastern Power Administration, Operations and maintenance (89-0302-0-1-271);

Southwestern Power Administration, Operations and maintenance (89-0303-0-1-271);

Tennessee Valley Authority fund, except non-power programs and activities (64-4110-0-3-999);

Western Area Power Administration, Construction rehabilitation, operations, and maintenance (89-5068-0-2-271); and

Western Area Power Administration, Colorado River basins power marketing fund (89-4452-0-3-271);

United States Enrichment Corporation.

* * * * * * *

AN ACT

To provide for financial control of Government corporations

[59 Stat. 597; 31 USC 9101]

* * * * * * *

§ 9101. Definitions

In this chapter—

* * * * * * *

(3) "wholly owned Government corporation" means——
(N) United States Enrichment Corporation

APPENDIX I. CALCULATION OF THE INITIAL DEBT OF THE UNITED STATES ENRICHMENT CORPORATION

The Government's cost of providing uranium enrichment services that has been incurred and not recovered—pursuant to section 161v. of the Atomic Energy Act of 1954, prior to Fiscal Year 1987 is determined to be $364 million. the methodology for arriving at this figure follows.

Column I of the table below sets out the net appropriations to the uranium enrichment program. Net appropriations are defined as the difference beween expenditures and revenues, from 1969, when the commercial operation of the enrichment enterprise began, through the end of FY 1986. Expenditures consist of capital investment and operating expenses, including those costs incurred for the Gas Centrifuge Enrichment Plant in Portsmouth, Ohio. Revenues include all funds received from commercial customers from the sale of enriched uranium. This data is based on information from the Department of Energy's annual budget submissions and from the annual financial reports of the enrichment enterprise. Net appropriations at the end of FY 1986 totaled $1.774 billion.

Column II represents revenues that would have been received from the sale of enriched uranium to the Government, if the Government had been paying the commercial price for the enrichment service. This is equal to outlays incurred in providing enrichment services for Government users. From 1969 through 1983, Government revenue is calculated by multiplying the number of separative work units (a measure of enrichment service) provided to the government by the commercial price. During this period, no appropriations were provided to government customers to pay the enrichment program for enrichment services.

From 1983 through 1986, funds were provided in appropriations bills for the separative work units produced for the government, although they were insufficient to cover expenditures. Government customers are not charged for non-cash expenditures, such as interest and depreciation, in their price for enrichment services. For these years, the difference between the amount provided in the appropriations bills and the commercial price is included in column II.

Column III, the sum of Column I and Column II, is equivalent to the net amount of money borrowed from or received by the Treasury in each year. In the yeas when money was borrowed from the Treasury, the amount in Column III becomes the principal upon which interest must be calculated.

The interest rates in column IV are the average long-term cost of money to the U.S. Treasury. This is documented in the financial reports of the uranium enrichment program in each year.

Interest is calculated on each amount from Column III, from the year when the money was borrowed or loaned to the end of FY 1986, at the fixed rate in Column IV. Each year is treated as a separate "loan" from the Treasury, at a specific interest rate. Column V is the total amount owed on the "loan," principal plus interest, for each year. The total amount that has been borrowed from the Treasury since the inception of the commercial enrichment program in 1969, until the end of FY 1986, is the sum of the yearly loans.

The unrecovered costs of the urnium enrichment enterprise under this interpretation are $364 million.

	Net appropriations I	Government revenues II	Revenue net III	Interest rate IV	Principal and interest V
Fiscal year:					
1969	−105.7	60.0	−45.7	4.985	−104.5
1970	−89.1	60.0	−29.1	5.785	−71.6
1971	29.1	60.4	89.5	5.665	204.5
1972	−69.7	21.1	−48.6	5.242	−99.4
1973	−76.1	29.9	−46.2	5.600	−93.8
1974	302.9	22.3	325.2	6.782	714.7
1975	−79.9	34.1	−45.8	7.015	−96.6
1976	−300.0	53.0	−247.0	6.644	−470.0
1977	−507.0	116.3	−390.7	6.403	−683.0
1978	−283.8	114.3	−169.5	6.979	−290.8
1979	−91.0	121.5	30.5	8.202	53.0
1980	−204.0	109.8	−94.2	9.685	−164.0
1981	−237.5	177.3	−60.2	11.335	−103.0
1982	56.3	230.0	286.3	12.395	456.9
1983	79.8	98.2	178.0	11.050	243.8
1984	10.6	124.2	134.8	11.052	166.2
1985	−300.1	90.0	−210.1	10.875	−232.9
1986	90.7	115.6	206.3	6.319	206.3
Total	−1,774.0	1,638.0	−136.5		−364.0

APPENDIX II. MEMORANDUM ON USE OF DOE INVENTORIES

MEMORANDUM

U.S. GOVERNMENT,
DEPARTMENT OF ENERGY,
February 5, 1985.

NE-32

Subject: *Action:* Use of Department of Energy (DOE) Uranium Inventories

To: The Secretary

Background:

The Department currently has large inventories of uranium available for use—a total equivalent to 73,000 tons of natural uranium (MTU). This includes 53,000 MTU of natural uranium and partially depleted uranium (tails) which, if recycled to 0.20 percent U-235, would effectively provide the additional 20,000 MTU.

The Government invested about $1.6 billion to acquire this inventory. The uranium was purchased primarily to assist the domestic uranium mining industry during the period from 1964, when Government demands ceased, to the early 1970's when the demands for uranium for commercial nuclear power reactors materialized.

In 1972, the Atomic Energy Commission declared this uranium inventory surplus to Government needs. The decision was made at that time to make the inventory available to overfeed the uranium enrichment plants to produce additional enriched uranium at lower cost. For a variety of reasons, only a portion was used to overfeed from 1972 to 1978, leaving the current 53,000 MTU. This inventory could be used to meet future defense needs and/or for overfeeding the enrichment plants to reduce power costs. If used with the depleted tails only to meet future defense needs, the total inventory would be sufficient to meet projected requirements until 2013.

Discussion:

Nuclear Energy (NE) and Defense Programs (DP) are jointly proposing that overfeeding be reinitiated so that the enrichment program can reduce near-term cash outlays for power, thereby keeping the separative work unit price down. This will result in near term savings to all enrichment customers, commercial and defense. However, it may require earlier funding for replenishing uranium to meet defense requirements, potentially as early as 1991, if projected defense needs remain unchanged.

Two options exist for replenishing uranium used in overfeeding—direct purchase and/or recycling tails. Economics to the Government of both options have been examined using conservative assumptions. The analysis concluded that overfeeding, and later recycling the tails, is the economic optimum. Overfeeding and recycling permit the ultimate allocation of 100 percent of the total inventory (natural uranium and tails) to meet defense needs. The overfeeding and recycling process does not alter the total amount of uranium available for defense needs and does not jeopardize our ability to meet defense needs.

The proposal includes the set aside of 50 percent of the existing natural uranium inventory (or 26,500 MTU) to meet defense needs. The remaining 50 percent would be made available for overfeeding, and later recycling, for use in meeting future defense needs. The overfeeding of uranium will save about $700 to $800 million in power outlays over the next 5 years. This savings will be passed on to all enrichment customers, commercial and defense, in the form of lower prices. Current projections are that up to 20 percent of future enrichment requirements will be to meet defense needs. On this basis, the benefits to DP would be about 20 percent, or $150 million, of the power savings.

When recycling is required, as early as 1991 or as late as 1999, depending on actual defense needs, DP will seek the funds required to recycle the tails. The ultimate cost or savings to DP will depend on when recycling occurs and the enrichment technology used to recycle the tails. If advanced technologies are deployed as currently projected, the costs of recycling can be reduced and the associated economic benefits to the Government further improved. If the overfeeding and recycling process were not pursued, then funds would be required to purchase uranium. The costs of purchasing new inventories could be as much as six times greater than the costs of recycling. Therefore, DP expects to minimize its total long-term costs through overfeeding and recycling.

Under this proposed strategy, the Department's uranium inventory would be designated for specific uses over time and therefore the potential sale of uranium by the Government to reduce its inventory would no longer be a consideration. That is, the potential for the Government to be in competition with the mining industry for sales of uranium would be eliminated.

Recommendation:

Approve the proposed strategy for the management and use of the Department's uranium inventory which includes these key elements:

Operate the uranium enrichment complex in an overfeeding and tails recycle mode to optimize the overall economics of the operation to the Government.

Make 50 percent of the natural uranium inventory available for overfeeding in the near-term to meet commercial requirements, with the remaining 50 percent of the natural uranium inventory and the tails being reserved for future defense needs.

Approved: Donald Paul Hodd,

JAMES W. VAUGHAN, JR.,
Acting Assistant Secretary for Nuclear Energy.
WILLIAM W. HOOVER,
Assistant Secretary for Defense Programs.

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